

Thursday
December 5, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Philadelphia, PA and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

- Anchorage Grounds**
Coast Guard
- Animal Drugs**
Food and Drug Administration
- Aviation Safety**
Federal Aviation Administration
- Crop Insurance**
Federal Crop Insurance Corporation
- Endangered and Threatened Species**
Fish and Wildlife Service
- Fisheries**
National Oceanic and Atmospheric Administration
- Government Property Management**
General Services Administration
- Grant Programs—Energy**
Conservation and Renewable Energy Office
- Hunting**
Fish and Wildlife Service
- Investments**
Securities and Exchange Commission
- Marketing Agreements**
Agricultural Marketing Service
- Motor Vehicle Safety**
Federal Highway Administration

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the **Federal Register** and Code of Federal Regulations.

WHO: The Office of the **Federal Register**.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the **Federal Register** system and the public's role in the development of regulations.
2. The relationship between the **Federal Register** and Code of Federal Regulations.
3. The important elements of typical **Federal Register** documents.
4. An introduction to the finding aids of the **FR/CFR** system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

PHILADELPHIA, PA

WHEN: Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)

WHERE: Room 3306/10,
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.

RESERVATIONS: Laura Lewis,
Philadelphia Federal Information Center.
215-597-1709

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the **Federal Register**,
First Floor Conference Room,
1100 L Street NW, Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227
Melanie Williams 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the Washington, DC briefing.

Organization and Functions (Government Agencies)

Housing and Urban Development

Security Measures

Coast Guard

Trade Practices

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Presidential Documents

Title 3—

Proclamation 5415 of December 3, 1985

The President

National Home Care Week, 1985

By the President of the United States of America

A Proclamation

Americans have always cared for one another in both good times and bad. When a family has a loved one—elderly, disabled, or a child—needing special care at home, it will inevitably respond by doing everything to keep that person at home. This is the American spirit. Home health care has a long tradition in our Nation. The Federal government, the States, and families are now working in a cooperative way to see that this commitment continues.

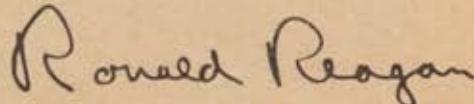
No one would suggest that a family can do more for a patient when a hospital or other appropriate institution is clearly needed. But American families go the extra step or mile, if needed, to protect, care for, and serve a member in need. The Federal government has done its share to help. Now, our many States have taken on the initiative to create special programs to enhance home health care. They are to be commended for this humane action.

In addition, there are countless churches, voluntary organizations, and private agencies that assist our families to care for a member at home. Our Nation is learning that, in spite of a time when "doing your own thing" is in, caring for a mother, father, sister, or brother—or any relative or friend—in the home is vastly more important. Independence, under God's loving care and guidance, is to be cherished. Who, then, should care for our own than those who love them best? Once again our long tradition prevails as so many in government, charitable groups, and families work for the well-being of one in need at home.

The Congress, by Senate Joint Resolution 139, has designated the week beginning December 1, 1985, as "National Home Care Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning December 1, 1985, as National Home Care Week. I call upon the people of the United States to observe the week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of December, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.



Presidential Documents

Proclamation 5416 of December 3, 1985

National Temporary Services Week, 1985

By the President of the United States of America

A Proclamation

The temporary services industry provides employers much needed flexibility to tailor their work forces to meet short-term needs. It also provides important job opportunities for American workers: last year, the temporary services industry provided employment for an estimated five million people.

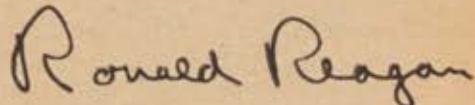
The temporary services industry currently is the second fastest growing business sector in our economy, in terms of new jobs created. Approximately one out of every two hundred nonagricultural jobs in the United States is provided through temporary services.

It is appropriate that we recognize the many and vital contributions that the men and women of the temporary services industry provide to our economy.

The Congress, by Senate Joint Resolution 195, has designated the week of December 1 through December 7, 1985, as "National Temporary Services Week" and has authorized and requested the President to issue a proclamation in commemoration of this observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of December 1 through December 7, 1985, as National Temporary Services Week, and I call upon the people of the United States to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of December, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.



[FR Doc. 85-29087]

Filed 12-4-85; 11:47 am]

Billing code 3195-01-M

Presidential Documents

Executive Order 12539 of December 3, 1985

President's Council on Physical Fitness and Sports

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to increase the membership of the President's Council on Physical Fitness and Sports, it is hereby ordered that Section 2(b) of Executive Order No. 12345, as amended, is further amended by increasing the number of members of the Council from fifteen to eighteen.

Ronald Reagan

THE WHITE HOUSE,
December 3, 1985.

[PR Doc. 85-29088]

Filed 12-4-85; 11:48 am]

Billing code 3105-01-M

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Rules and Regulations

This section of the **FEDERAL REGISTER** contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first **FEDERAL REGISTER** issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 959, 971, 989, and 991

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 959, 971, and 989 for the 1985-86 fiscal period, and Marketing Order 991 for the remaining 1985 calendar year period. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1985-July 31, 1986 (§ 959.228, 971.225, and 989.336); August 1, 1985-December 31, 1985 (§ 991.320).

FOR FURTHER INFORMATION CONTACT: Constantino P. Heon, Vegetable Branch, F&V, AMS, USDA, Washington, DC 20250, (202) 447-2681.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "nonmajor" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that these actions will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Agricultural Marketing Agreement Act, however, requires the application of a uniform rule to those regulated, and it

would take precedence if the two statutes were incompatible.

Marketing orders and rules proposed thereunder, however, are unique in that they are brought about through group action of essentially small entities for their own behalf. Thus both statutes have small entity orientation and compatibility.

The rule authorizes expenditures and establishes assessment rates under Marketing Orders 959, 971, and 989 for the 1985-86 fiscal period, and Marketing Order 991 for the remaining 1985 calendar year period.

The assessment rates prescribed herein represent only a small fraction of the crop values of the specified commodities. It is estimated that approximately 42 handlers of Texas onions, 4 handlers of Texas lettuce, 21 handlers of California raisins, and 23 handlers of domestic hops are currently subject to regulation under marketing orders each season, and the great majority of this group may be classified as small entities. While regulations issued under these orders impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). These actions are based upon the recommendations and information submitted by each committee established under the respective marketing orders, and upon other information. It is found that the expenses and rates of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking and good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Each order requires that the rate of assessment for a particular fiscal period shall apply to all assessable fruits and vegetables handled from the beginning of such period. To enable the committee to meet current fiscal obligations, approval of the expenses is necessary without delay. It is necessary to effectuate the declared policy of the act to make these provisions effective as

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specified and handlers have been apprised of such provisions, and the effective time.

List of Subjects in 7 CFR 959, 971, 989, and 991

Marketing Agreements and Orders, Hops, Lettuce, Onions, Raisins, California, Texas.

1. The authority citation for 7 CFR Parts 959, 971, 989, and 991 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Therefore, §§ 959.225, 971.224, 989.335, and 991.319 are removed and new §§ 959.226, 917.225, 989.336, and 991.320 are added to read as follows: (The following sections prescribe expenses and assessment rates and will not be published in the Code of Federal Regulations.)

PART 959—ONIONS GROWN IN SOUTH TEXAS

§ 959.226 Expenses and assessment rate.

Expenses of \$262,382.58 by the South Texas Onion Committee are authorized, and an assessment rate of \$0.0425 per 50-pound container or equivalent quantity is established for the fiscal period ending July 31, 1986. Unexpended funds may be carried over as a reserve.

PART 971—LETTUCE GROWN IN SOUTH TEXAS

§ 971.225 Expenses and assessment rate.

Expenses of \$44,915 by the South Texas Lettuce Committee are authorized for the fiscal period ending July 31, 1986. During the fiscal period, an assessment rate of \$0.04 per carton of lettuce is established. Unexpended funds may be carried over as a reserve.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

§ 989.336 Expenses and assessment rate.

Expenses of \$297,000 by the Raisin Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 989.80 of \$1.10 per ton of assessable raisins is established for the crop year ending July 31, 1986. Any unexpended funds from that crop year shall be credited or refunded to the handler from whom collected.

PART 991—HOPS OF DOMESTIC PRODUCTION**§ 991.320 Expenses and assessment rate.**

Expenses of \$327,000 by the Hop Administrative Committee are authorized and an assessment rate payable by each handler in accordance with § 991.56 is fixed at 0.6 cent per pound of salable hops for the period beginning August 1, 1985, through December 31, 1985, when Marketing Order No. 991 terminates. Day-to-day administrative expenses incurred by the trustees to liquidate the affairs of the committee, including all assets of the committee, are authorized after December 31, 1985, until such liquidation has been completed: *Provided*, That those expenses included in the committee's budget of expenses for legal fees, any fees associated with the public hearing to amend the order held in June 1984, or any additional expenses that may be incurred by the appointed trustees in liquidating the affairs of the committee shall not be paid unless Departmental approval is received prior to payment.

Dated: November 29, 1985.

Joseph A. Gribbin,

*Director, Fruit and Vegetable Division,
Agricultural Marketing Service.*

[FR Doc. 85-28912 Filed 12-4-85; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration**7 CFR Part 1965****Servicing of Real Estate Security for Single Family Rural Housing Loans; Correction**

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published September 30, 1985, (50 FR 39636). In the revision and redesignation of FmHA's regulation pertaining to Security Servicing for Single Family Rural Housing Loans the term "Other Real Estate (ORE)" was used even though FmHA had officially changed it to "NonProgram (NP)." Additionally, an inconsistency in the requirements for release from liability was printed in two paragraphs of the same section. The intent of this action is to use current terminology and to eliminate the inconsistency.

FOR FURTHER INFORMATION CONTACT:

David J. Villano, Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property

Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, telephone (202) 382-1452.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 85-23238 appearing on pages 39636 to 39649 in the issue of September 30, 1985.

PART 1965—REAL PROPERTY

1. The authority citation for Part 1965 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart C—Security Servicing for Single Family Rural Housing Loans**§ 1965.105 [Corrected]**

2. Section 1965.105(d) is corrected by changing the title "Other Real Estate (ORE) cases" to read "NonProgram (NP) cases" and by changing the acronym "ORE" in the first three sentences to read "NP."

§ 1965.125 [Corrected]

3. Section 1965.125(a)(4) is corrected by changing "Other Real Estate (ORE)" in the 4th sentence to read "NonProgram (NP)."

§ 1965.126 [Corrected]

4. Section 1965.126(b)(1)(iii) is corrected by changing "ORE" to read "NP."

5. Section 1965.126(d) is corrected by changing "ORE" in the 3rd sentence to read "NP."

6. Section 1965.127 is corrected by revising paragraphs (a)(2) and (a)(4)(ii) to read as follows:

§ 1965.127 Release from liability.

(a) * * *

(2) When the total debt is assumed on ineligible terms, upon recommendation of the County Committee, the borrower and co-signer, if any, may be released by the County Supervisor provided the repayment period of the assumption is not more than 5 years.

* * *

(4) * * *

(ii) When assumption on ineligible terms is approved with a repayment period of not more than 5 years, or when the property is sold outside the program, the County Committee must make a favorable recommendation on release from liability on Form FmHA 440-2, "County Committee Certification or Recommendation," according to the FMI. After obtaining the County Committee's recommendation, the

County Supervisor will determine release from liability.

* * * * *

Dated: November 19, 1985.

Vance L. Clark,
*Administrator, Farmers Home
Administration.*

[FR Doc. 85-28892 Filed 12-4-85; 8:45 am]

BILLING CODE 3410-07-M

SMALL BUSINESS ADMINISTRATION**13 CFR Part 120****Business Loans; Secondary Market Substantive Rules****Correction**

In FR Doc. 85-7403, beginning on page 12229 in the issue of Thursday, March 28, 1985, make the following correction:

On page 12232, third column, in § 120.702(e), in the fourth line "of" should have read "or".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 85-NM-129-AD; Amdt. 39-5178]

Airworthiness Directives; Boeing Model 757-200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Boeing Model 757-200 airplanes that requires inspection for proper self-locking torque of certain self-locking nuts, and replacement, if necessary. This action is prompted by detection of several nuts that were found to have insufficient self-locking torque for proper self-locking. This situation, if not corrected, could result in the loss of an affected nut and subsequent loss of retention of the associated flight control component.

EFFECTIVE DATE: December 21, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft

Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:
Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-2924.
Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: During the trouble shooting of a flight control problem on a Model 767 airplane in service, two self-locking nuts that attach the power control actuators to the elevator surface were found without the self-locking feature. After relieving the installation torque, these nuts could be removed with hand pressure. Boeing conducted checks at their manufacturing facilities for Model 757 airplanes and found additional nuts that had inadequate self-locking characteristics. This situation, if not corrected, could result in the loss of retention of the associated flight control component, which could result in a reduction of airplane control.

Boeing has released Service Bulletin 757-27-0069, dated November 4, 1985, which identifies the locations of the suspect nuts and provides a procedure to verify if the nuts have the proper self-locking torque.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD is issued to require inspection for the proper self-locking torque of certain self-locking nuts in accordance with the Boeing service bulletin. All nuts found to have insufficient self-locking torque must be replaced prior to flight.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1334(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757-200 series airplanes listed in Boeing Service Bulletin 757-27-0069, dated November 4, 1985. To detect nuts installed in the aileron, rudder and elevator power control actuators, and rudder ratio changer that have insufficient self-locking torque characteristics, accomplish the following, unless already accomplished:

A. Within 30 days after the effective date of this AD, check the self-locking nuts, P/N BACN10JC12CM or BACN10JC12CD, for proper self-locking torque in accordance with Paragraph III of Boeing Service Bulletin 757-27-0069, dated November 4, 1985, or later FAA-approved revision. If any self-locking nut is found not to meet the self-locking torque requirements of Boeing Service Bulletin 757-27-0069, dated November 4, 1985, or later FAA-approved revision, replace it prior to further flight with a nut found to meet the self-locking torque requirements of the above referenced service bulletin.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this document who have not already received copies of the service bulletin may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 21, 1985.

Issued in Seattle, Washington, on November 26, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-28872 Filed 12-4-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-56-AD; Amdt. 39-5177]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1165

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a one-time inspection of all generator power feeder cables on certain McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, and modification of the generator power feeder cable installation on McDonnell Douglas Model DC-9-81 and DC-9-82 series airplanes. This action is prompted by a report of an auxiliary power unit (APU) generator feeder cable electrically shorting to the airplane structure and causing smoke to enter the cabin area. This AD is necessary to aid in the elimination of a potential ignition source for fire.

DATE: Effective January 10, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Alan T. Shinseki, Aerospace Engineer, Systems & Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require the inspection of all generator power feeder cables on all McDonnell Douglas Model DC-9 and C-9 (Military) series

airplanes, and modification of the power feeder cable installation on all McDonnell Douglas Model DC-9-81 and DC-9-82 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* on July 1, 1985 (50 FR 27012). The comment period for the proposal closed August 12, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the five comments received. None of the commenters disagreed with the proposed rule's applicability to the DC-9-81 and DC-9-82 series airplanes. One of the five commenters wholly supported the proposal.

Three commenters stated that the proposed rule was not warranted for DC-9-10 through DC-9-50 series airplanes, based on results from their inspections conducted in cooperation with McDonnell Douglas and based on the absence of generator power feeder cable discrepancies in the service history of the DC-9-10 through DC-9-50 series airplanes. The FAA disagrees. While incidents of chafing and shorting of the generator power feeder cables found in the DC-9-81 and DC-9-82 series airplanes may not have occurred on the DC-9-10 through DC-9-50 series airplanes, inspections of areas not normally inspected and surveys of other operators conducted by McDonnell Douglas have revealed a significant number of generator power feeder cable installation discrepancies on DC-9-10 through DC-9-50 series airplanes. If not corrected, these discrepancies could cause shorting of the cables; therefore, a potential ignition source for fire does exist on those airplanes.

Three commenters, two of which have initiated formal inspection action, stated that the one-year compliance period would cause undue hardship if the proposed rule was adopted; however, all three commenters stated that they would be able to meet the two-year compliance schedule recommended by McDonnell Douglas Service Bulletin 24-78. A fourth commenter suggested that the compliance period should be 36 months. The FAA disagrees with a 36-month compliance period since other commenters who have accomplished preliminary inspections and operate larger DC-9 fleets have not expressed the same concerns. Furthermore, the FAA considers that a one-year compliance requirement is appropriate, based upon the fact that operators will have had an extensive period of time in which to initiate an inspection program prior to the effective date of this AD.

It is estimated that 669 airplanes of U.S. registry will be affected by this AD. It will require approximately 40 to 92 manhours per airplane to accomplish the required actions, and the average labor cost will be \$40 per manhour. The actual cost of modification parts for McDonnell Douglas Model DC-9-81 and DC-9-82 series airplanes is estimated to be \$250 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,738,970.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule.

For the reasons discussed above, the FAA has determined that this regulation is not major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, fuselage numbers 1 through 1165, certificated in any category. Compliance required as indicated unless previously accomplished.

To eliminate a potential fire ignition source from the generator power feeder cable installation, accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), for all McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, inspect and repair, as necessary, power feeder cable installation in accordance with the Accomplishment Instructions of McDonnell Douglas DC-9

Service Bulletin 24-78, dated April 9, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification office, FAA, Northwest Mountain Region.

B. Within 12 months after the effective date of this airworthiness directive (AD), modify the power feeder cable installation on all McDonnell Douglas Model DC-9-81 and DC-9-82 series airplanes in accordance with the Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 24-78, dated April 9, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operative airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective January 10, 1986.

Issued in Seattle, Washington, on November 26, 1985.
Charles R. Foster,
Director, Northwest Mountain Region.
[FR Doc. 85-28874 Filed 12-4-85; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9191]

Oklahoma Optometric Association; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires the Oklahoma Optometric Association, among other things, to cease prohibiting any member optometrist from: affiliating with or operating franchises; operating branch offices; or truthfully advertising the prices, terms and availability of optometric services or optical goods.

DATE: Complaint issued Feb. 28, 1985.
Decision issued Nov. 19, 1985.*

FOR FURTHER INFORMATION CONTACT:
FTC/B-823, Arthur N. Lerner,
Washington, D.C. 20580. (202) 724-1341.

SUPPLEMENTARY INFORMATION: On Thursday, Sept. 12, 1985, there was published in the Federal Register, 50 FR 37229, a proposed consent agreement with analysis In the Matter of Oklahoma Optometric Association, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.395 To control marketing practices and conditions; § 13.475 To restrict competition in buying; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-45 Maintain records. Subpart—Cutting Off Supplies or Service: § 13.655 Threatening disciplinary action or otherwise.

List of Subjects in 16 CFR Part 13

Optometrists, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,
Secretary.

[FR Doc. 85-28893 Filed 12-4-85; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. 9177]

Columbian Enterprises, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

*Copies of the Complaint and the Decision and Order are filed with the original document.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Tulsa, Okla. producer and distributor of carbon black, a component in the manufacture of natural and synthetic rubber, among other things, to obtain Federal Trade Commission approval before acquiring substantial assets or stock in its competitors' production facilities. Such approval is needed if the total acquisitions over a five year period would increase the respondent's yearly carbon black production capacity by 130 million pounds or more.

DATE: Complaint issued May 8, 1984.
Decision issued Nov. 13, 1985.*

FOR FURTHER INFORMATION CONTACT:
FTC/L-502, Edward F. Glynn, Jr.,
Washington, DC 20580. (202) 634-6808.

SUPPLEMENTARY INFORMATION: On Tuesday, Sept. 23, 1985, there was published in the Federal Register, 50 FR 35565, a proposed consent agreement with analysis In the Matter of Columbian Enterprises, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: 13.5 Acquiring corporate stock or assets; 13.5-20 Federal Trade Commission Act.

List of Subjects in 16 CFR Part 13

Rubber carbon black, Trade practices.

(Sec. 8, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,
Secretary.

[FR Doc. 85-28891 Filed 12-4-85; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 276

[Release No. IA-1000]

Investment Advisers; Uniform Registration, Disclosure, and Reporting Requirements; Staff Interpretation

AGENCY: Securities and Exchange Commission.

ACTION: Statement of staff interpretive position regarding certain rules and forms.

SUMMARY: The Commission is publishing, in question and answer form, certain interpretive positions of the staff of its Division of Investment Management regarding Form ADV and other reporting and disclosure requirements applicable to investment advisers under the Investment Advisers Act of 1940. The purpose of this release is to: (i) Update a previous release which set forth staff positions regarding adviser registration and annual reporting requirements and (ii) provide guidance regarding recently adopted revisions to Form ADV.

DATE: December 3, 1985.

FOR FURTHER INFORMATION CONTACT:
Jay Gould, Division of Investment Management, (202) 272-2107, Room 5135, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On October 15, 1985, the Commission adopted revisions to Form ADV, the registration form for investment advisers under the Investment Advisers Act of 1940,¹ to make the form a uniform form for advisers registering with the Commission and the forty jurisdictions which require investment advisers to register. Uniform Form ADV was developed jointly by the Commission and the North American Securities Administrators Association, Inc. ("NASAA"), based on Form ADV as adopted by the Commission in 1979, and amended in 1982 and 1983.² Uniform Form ADV will be effective on January 1, 1986. Advisers registered with the Commission on January 1, 1986 will be required to amend their registrations by filing the new form by March 31, 1986.

¹IA Rel. No. 991 [October 15, 1985] [50 FR 42903 (October 23, 1985)].

²IA Rel. No. 864 [January 30, 1979] [44 FR 7370 (February 7, 1979)]; IA Rel. No. 805 [May 14, 1982] [47 FR 22505 (May 25, 1982)]; IA Rel. No. 840 [February 28, 1983] [48 FR 9521 (March 7, 1983)].

*Copies of the Complaint and the Decision and Order are filed with the original document.

Registrants are referred to IA Rel. No. 991 for further information concerning the filing requirements for the new form.

In 1981, the Commission published a question and answer release containing staff views concerning Form ADV and related registration and reporting requirements.³ The purpose of the release was to provide guidance to registrants in complying with these requirements. While the release continues to be useful, portions of it now are out of date. The release published today revises IA Rel. No. 767 to reflect changes made in Form ADV and provide certain additional guidance concerning the new form. Three new questions have been added to incorporate positions developed by the staff in recent years on custody and to provide guidance to registrants in calculating clients under new Items 17B and 20A of uniform Form ADV and employees under Item 17A. Upon publication of this release, IA Rel. No. 767 is rescinded.

II. Certain Staff Interpretive Positions Regarding Investment Adviser Disclosure and Reporting Requirements

A. Rule 204-1

1. Fiscal Year

Question: Paragraphs (b) and (c) of Rule 204-1 [17 CFR 275.204-1 (b) and (c)] require that, within 90 days of the end of its fiscal year, a registered investment adviser make certain amendments to its Form ADV and file an annual report on Form ADV-S. For the purposes of these requirements, may an investment adviser treat as its fiscal year an accounting period other than a calendar year or the period used for reporting income taxes?

Response: Yes. An adviser may use any twelve month accounting period, provided that the period is fixed or determinable and consistently used by the adviser. The term "fiscal year" is not defined in the Advisers Act or in the rules or forms thereunder, but, as commonly used, the term refers to a twelve month accounting period. For the purposes of paragraphs (b) and (c) of Rule 204-1, an investment adviser is not necessarily limited to a calendar year or the accounting period used for income tax purposes. For example, an investment adviser that is also registered with the Commission as a broker-dealer may elect to use the same accounting period used in filing financial statements under Rule 17a-5(d) [17 CFR 240.17a-5(d)] under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] ("Exchange Act"), provided that

this period satisfies the conditions described above, even though a different accounting period might be used for income tax purposes.

2. ADV-S in Lieu of Amendments

Question: Paragraph (c) of Rule 204-1 requires a registered investment adviser to file an annual report on Form ADV-S within 90 days of the end of its fiscal year unless its registration has been withdrawn, cancelled or revoked prior to that date. Can Form ADV-S also be used to amend Form ADV?

Response: No. Form ADV-S is a separate form which must be filed independently of Form ADV or any amendments thereto. Amendments to Form ADV must be filed in accordance with the provisions of paragraph (b) of Rule 204-1. Even if an amendment to Form ADV is filed concurrently with the Form ADV-S filing, it must meet all the requirements applicable to amendments filed separately. Amendments should not be attached to Form ADV-S.

B. The Brochure Rule

1. Separate Brochure

Question: Paragraph (a) of the Brochure Rule [17 CFR 275.204-3(a)] requires certain investment advisers subject to registration under the Advisers Act to furnish clients and prospective clients with a written disclosure statement, which may be either a copy of Part II of an adviser's Form ADV or a separate written document ("brochure") "containing at least the information *** required by Part II of Form ADV." For purposes of Rule 204-3(a), if an investment adviser uses a separate brochure, rather than a copy of Part II of its Form ADV, may the adviser omit from the brochure (i) the cautionary legend on page 1 of Part II of Form ADV (which states that the Commission has not approved the information contained in Part II) and (ii) negative responses to items in Part II?

Response: In the view of the staff, the cautionary legend on page 1 of Part II of Form ADV is not "information *** required" by that part within the meaning of paragraph (a) of the Brochure Rule and, therefore, is not required to be included in any brochure used by an adviser. However, consistent with its obligations under the antifraud provisions of section 208 [15 U.S.C. 80b-6] and the provisions of section 208(a) [15 U.S.C. 80b-8(a)] of the Advisers Act,⁴ an investment adviser should not

* Section 208(a) provides that "It shall be unlawful for any person registered under section 203 of (the Advisers Act) to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that his abilities or

make any representation, expressed or implied, that the Commission has approved either the information in the brochure or the investment adviser's qualifications or business practices.

Whether an investment adviser may omit from its brochure a negative response to any item in Part II of its Form ADV depends on the particular item and whether the "negative" response is material information which should be disclosed to any advisory client. For example, Item 3 of Part II requires an investment adviser to indicate on a checklist whether or not it provides advice with respect to certain types of securities enumerated in that item. A separate brochure used by an adviser which lists specific types of securities as to which the adviser gives advice generally would not have to disclose the types of securities about which the adviser does not provide advice, unless this disclosure was otherwise material. On the other hand, for example, a negative response to Item 5 of Part II, which would indicate that the adviser does not require its associated persons to meet any general standards of education or business background, should be disclosed in a brochure.

2. Termination Without Penalty

Question: Pursuant to paragraph (b)(1)(ii) of the Brochure Rule [17 CFR 275.204-3(b)(1)(ii)], an investment adviser may delay delivering its written disclosure statement to prospective clients until the time of entering into an advisory contract, if the client has a right to terminate the contract "without penalty" within five business days. Does a fee charged by an adviser for advisory services provided to a client who terminates its advisory contract within the five business day period constitute a "penalty"?

Response: No. A pro-rata charge for bona fide advisory services actually rendered during this five day period would not be deemed to be a "penalty" for the purposes of the Brochure Rule. However, a separate charge for "start-up" expenses normally would be considered a penalty within the meaning of the Brochure Rule.

3. Time of Annual Offer or Delivery

Question: Paragraph (c)(1) of the Brochure Rule [17 CFR 275.204-3(c)(1)] requires an investment adviser, annually, and without charge, either to deliver a written disclosure statement to

qualifications have in any respect been passed upon the United States or any agency or any officer thereof."

³IA Rel. No. 767 (July 21, 1981) [46 FR 38496 (July 28, 1981)].

its existing advisory clients or to offer, in writing, to deliver the statement upon written request from the client. Must an adviser make the annual offer to deliver, or actual delivery, on the specific anniversary date of each individual advisory client's contract?

Response: No. Paragraph (c)(1) of the Brochure Rule does not prohibit an adviser from making the required delivery or offer to some or all of its clients simultaneously, regardless of the date on which the advisory contract became effective, provided that the adviser offers to deliver, or actually delivers to advisory clients, a then current written disclosure statement at least once every 12 months. An adviser might, for example, establish a practice of making the offer or delivery required by paragraph (c)(1) at the beginning of the calendar year. If this is going to be the only time during the year that an offer or delivery will be made, then it should be made to every client, including those who initially contracted with the adviser during the preceding year. An adviser may include the offer or delivery in a client billing or other routine correspondence.

C. Form ADV, Part I

1. Amending for Change in Form of Organization or State of Incorporation

Question: If an investment adviser changes its form of business organization (from a sole proprietorship to a corporation, for example) or its state of incorporation, must the adviser file a new application for registration on Form ADV, or may the change in business organization merely be reflected as an amendment to the adviser's existing Form ADV?

Response: Section 203(g) of the Advisers Act [15 U.S.C. 80b-3(g)] provides that a successor to the business of an investment adviser registered under the Advisers Act shall be deemed likewise registered, if it files an application for registration within thirty days from the date it succeeded to the business of the adviser, unless and until the Commission denies, revokes or suspends the registration of the successor adviser. A change in the form of an investment adviser's business organization generally would involve the creation of a new legal entity and section 203(g) would require the new entity to file a new or successor application for registration on Form ADV.

Rule 203-1 [17 CFR 275.203-1] under the Advisers Act permits an adviser to file an amendment on Form ADV to reflect a change in the adviser's state of incorporation or form of organization

which will be deemed to be an application for registration, even though it is filed as an amendment. The adviser is required, however, to file the amendment within thirty days of the date of the succession and to pay the \$150 registration fee for the new or successor registration. If the adviser files its successor application as a new application rather than as an amendment, it also must file Form ADV-W to withdraw the registration of the predecessor adviser.

It should be noted that a change in an investment adviser's form of business generally would involve the "assignment" or advisory contracts to the successor adviser within the meaning of section 205(2) of the Advisers Act [15 U.S.C. 80b-5(2)]. That section, in effect, prohibits an investment adviser that is subject to registration under the Advisers Act from assigning an advisory contract without the consent of the other party to the contract. Accordingly, the consent of clients to the assignment of their advisory contracts to the successor adviser would be required.

2. Time for Filing Successor Application

Question: Section 203(g) of the Advisers Act authorizes a successor to the business of an investment adviser to file an application for investment adviser registration within 30 days after the succession. As an alternative, may the person file a Form ADV prior to the succession?

Response: Yes. Section 203(c) of the Advisers Act [15 U.S.C. 80b-3(c)] authorizes an investment adviser, or any person who presently contemplates becoming an investment adviser, to file an application for registration with the Commission. Accordingly, a person who intends to succeed to the business of an investment adviser, and who, therefore, presumably contemplates becoming an investment adviser, may file a Form ADV prior to the succession.

3. Number of Employees

Question: Item 17A requires an adviser to indicate the number of employees who perform investment advisory functions for the adviser. In responding, when should an adviser count "owner-employees" and "independent contractors?"

Response: The term "employee" is not defined in the Advisers Act. Employees are included among the persons who are "person[s] associated with an investment adviser" as defined in section 202(a)(17) [15 U.S.C. 80b-2(a)(17)] of the Advisers Act. The staff interprets the term employee to include independent contractors whose

activities are controlled by the investment adviser.⁵ An independent contractor is subject to the control of an employer if their relationship is one of principal and agent or master and servant. Accordingly, in responding to Item 17A of Form ADV an adviser should count among its employees any persons, including those denoted "independent contractors," performing investment advisory functions for the adviser whose activities are controlled by the adviser. Any "owner-employee" performing investment advisory functions for the adviser also should be counted.

4. Number of Clients

Question: In calculating the number of clients to whom the applicant provided advisory services during the last fiscal year in Items 17B and 20A of Form ADV, should "clients" who have paid no fee in that fiscal year be counted?

Response: An adviser who provides investment advice to a person should count that person as a client for the fiscal year in which the services were provided. If a person prepays its advisory fee in one year and receives services on an ongoing basis during the following year, the adviser should count that person as a client for the year payment was received and for every year services were provided. If an adviser charges for services after they are rendered, a person who receives advisory services in the latter part of one fiscal year but is not billed until the following fiscal year should be counted as a client in both years, if services were provided in each year.

A client who receives advisory services on an ongoing basis, should be counted as a client every year services are provided irrespective of when payment is received. In the staff's view an adviser would violate section 208(d).⁶

* This is consistent with the Commission's long-standing interpretation of the status of independent contractors as employees of broker-dealers under the Exchange Act. See letter to Gordon S. Macklin, President, National Association of Securities Dealers, from Douglas Scarff, Director, Division of Market Regulation, (available July 16, 1982). To the extent that an independent contractor performed investment advisory functions for an investment adviser but was not under the control of that adviser, the independent contractor's activities would require the independent contractor to be separately registered as an adviser with the Commission.

⁵ Section 208(d) [15 U.S.C. 80b-8(d)] provides that, "It shall be unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly under the provisions of this title or any rule or regulation thereunder."

of the Advisers Act if the adviser either required prepayment of fees in a fiscal year or deferred payment of fees until the next fiscal year in order to avoid registration or reporting requirements under the Act.

5. Automatic Payment of Advisory Fees Deemed Custody

Question: If an adviser bills its client's account by sending the bill directly to the custodian holding the client's funds and securities, does the adviser have custody for purposes of Rule 206(4)-2 [17 CFR 275.206(4)-2] and Form ADV Part I, Item 13?

Response: Generally, the staff's position is that a person has custody if it directly or indirectly holds client funds or securities, has any authority to obtain possession of them or has the ability to appropriate them. Accordingly, an adviser may be deemed to have custody where the adviser is paid automatically from client funds upon presentation of a bill to the custodian of the client's account. The staff takes the position that the adviser will not be deemed to have custody under these circumstances, however, if: (1) The client provides written authorization permitting the adviser's fees to be paid directly from the client's account held by an independent custodian, (2) the adviser sends to the client and the custodian at the same time, a bill showing the amount of the fee, the value of the client's assets on which the fee was based, and the specific manner in which the adviser's fee was calculated, and (3) the custodian agrees to send to the client a statement, at least quarterly, indicating all amounts disbursed from the account including the amount of advisory fees paid directly to the adviser.⁷

D. Form ADV, Part II

1. Filing Part II When Exempt From Brochure Rule

Question: Is an investment adviser whose contracts are exempt from the Brochure Rule's delivery requirements—for example, an investment adviser to an investment company or an investment adviser providing only impersonal advisory services—required to complete Part II of Form ADV?

Response: Yes. Although the Brochure Rule exempts from the disclosure statement delivery requirements investment advisers that provide certain types of services, the rule does not exempt them from the requirements of

⁷ See Lawwill Sena & Weller Inc. (pub. avail. April 11, 1983). This position was first established in Investment Counsel Association of America, Inc. (pub. avail. July 9, 1982).

section 203(c) under the Advisers Act and Rule 203-1 thereunder [17 CFR 275.203-1] regarding the requirements for filing both parts of Form ADV.

2. Negotiable Fee Schedules

Question: In response to Item 1 of Part II, may an investment adviser which charges for its services in accordance with a fee schedule, but which also permits negotiation of fees, simply set forth the basic fee schedule and state that its fees are negotiable, or must the adviser disclose the range within which fees can be negotiated?

Response: The extent of disclosure required by Item 1 of Part II concerning the adviser's fees will depend on the facts and circumstances. As a general matter, if an adviser's usual fees are negotiable, but only within a range, the adviser would have to disclose his basic fee schedule, as well as the range within which fees can be negotiated. On the other hand, if fees are negotiable, but no particular range has been established either explicitly or by practice, a general statement that fees are negotiable, together with the inclusion of the basic fee schedule, generally would be adequate.

3. Discretion Over Commission Rates

Question: If an investment adviser exercises discretion as to the commission rates at which securities transactions for client accounts are effected, must it, in response to Item 1 of Part II, disclose the commission rates charged client accounts, as well as its advisory fees?

Response: An adviser exercising brokerage discretion for client accounts generally would not have to disclose, in response to Item 1 of Part II, the commission rates at which securities transactions are effected for client accounts unless these charges form the basis, in whole or in part, for the adviser's compensation. The investment adviser, however, would have to describe in detail, in response to Item 12 of Part II, its brokerage placement practices.

4. Disclosure of Background and Business Practices for New Advisers

Question: If an applicant for registration is a person who has not previously engaged in the advisory business, must the applicant complete Part II of Form ADV, which requires information as to the background and business practices of an adviser?

Response: Yes. All applicants for registration as an investment adviser must complete fully Form ADV, including Parts I and II. An applicant who is new to the advisory business,

should respond to the various items in Part II in light of the advisory services the adviser *intends* to provide, being careful to make clear the prospective nature of the advisory activities so as not to make any misleading statements.

5. Investment Supervisory Services and Management Not Involving Investment Supervisory Services

Question: What is the difference between providing "investment supervisory services" as defined in Item 1A(1) of Part II and "manag[ing] investment advisory accounts not involving investment supervisory services" within the meaning of Item 1A(2) of Part II?

Response: "Investment supervisory services," as used in Item 1A(1), means the giving of continuous advice to clients as to the investment of funds on the basis of the individual needs of each client.⁸ On the other hand, Item 1A(2) refers to the management of accounts where either the individual needs of the clients are not considered or where the management services are not continuous. An example of an advisory service which would be covered by Item 1A(2), and not by Item 1A(1), would be an account management service provided only with respect to a particular class of securities owned by a client (e.g., options) where it is understood that the adviser will not consider the individual needs of a particular client as distinct from the needs of any other client.

6. Use of Schedule D To Disclose Business Background

Question: Item 6 of Part II of Form ADV requires an investment adviser to provide certain information concerning the education and business background of its principal executive officers, and each member of the adviser's investment committee, or those persons who determine or approve the investment advice given by the adviser. May an investment adviser make reference to Schedule D of Form ADV which requires, in part, the same information required by Item 6, rather than setting forth that information in full in response to Item 6 itself?

Response: Item 6 may be answered by reference to Schedule D. However, in furnishing this information to an advisory client or prospective advisory client pursuant to the Brochure Rule, a reference to Schedule D is adequate only if the schedule is furnished.

⁸ This definition is incorporated from section 202(a)(13) of the Advisers Act [15 U.S.C. 80b-2(a)(13)].

together with a copy of Part II of the adviser's Form ADV, or is included as part of a brochure, and the presentation of the information in that manner is not otherwise misleading.

7. Broker-Dealer Registration

Question: Item 8A of Part II requires an investment adviser to disclose whether it is registered as a broker-dealer. Is this item intended to encompass registrations as a broker-dealer in other jurisdictions, such as the states, as well as with the Commission?

Response: Yes. Item 8A covers broker-dealer registration in other jurisdictions. Therefore, if an investment adviser is registered as a broker-dealer in a state but not under the Exchange Act, the adviser should respond affirmatively to Item 8A.

8. Adviser Brokerage Discretion

Question: Item 9B of Part II asks whether the applicant "effects" securities transactions for compensation as a broker or agent for any investment advisory client. Certain investment advisers have discretionary authority to place orders with brokers to execute securities transactions for client accounts but do not receive any specific compensation or commission for this function. However, they do receive discretionary brokerage authority. Would this activity constitute "effecting" a transaction in securities?

Response: For the purposes of Item 9B, an adviser that is vested with brokerage placement discretion by its clients, but that does not execute transactions in securities for clients and does not receive any specific compensation in connection with securities transactions for clients would not, in the view of the staff, be deemed to be "effecting" securities transactions for client accounts solely by virtue of this activity. It should be noted that Item 12 of Part II calls for disclosure about brokerage discretion.

9. Account Reviews

Question: Does the account review process required to be described in response to Item 11 of Part II refer only to internal review procedures used by an investment adviser, or does it also refer to an account review conducted by a third party?

Response: Item 11 is intended to cover all procedures, including internal and external ones, employed by an investment adviser in connection with

the review and evaluation of client accounts.

E. Balance Sheet Requirement: Item 14 of Part II of Form ADV

1. Accounting Method for Balance Sheet

Question: Must the balance sheet filed pursuant to Item 14 of Part II be prepared on a cash basis or on an accrual basis? If the balance sheet is required to be prepared on an accrual basis, must all of the adviser's internal books and records also be prepared on an accrual basis?

Response: As specified in Item 14 of Part II, the required balance sheet must be prepared in accordance with generally accepted accounting principles, which require that, among other things, the balance sheet be prepared on an accrual basis. An investment adviser's internal books and records may be maintained on either a cash or accrual basis, provided that the adviser maintains the books and records necessary to reconcile the adviser's cash accounts (as shown on its internal books and records) with the corresponding accounts on the balance sheet as restated and presented on an accrual basis.

2. Balance Sheet Preparation for New Registrant

Question: If the applicant is a newly formed corporation or partnership subject to the balance sheet requirement of Part II, Item 14, and is just commencing business as an investment adviser, it will have no prior fiscal year end for which to file a balance sheet. If the applicant is such a company or if it is a sole proprietorship which has not previously engaged in business as an investment adviser, how should it respond to Item 14 of Part II of Form ADV?

Response: If an applicant subject to the balance sheet requirement of Part II Item 14 has had no prior fiscal year end for which to file a balance sheet or is a sole proprietor who has not previously engaged in business as an investment adviser, no balance sheet is required to be filed. However, the adviser is required to amend its Form ADV by filing a balance sheet in response to Item 14 of Part II within 90 days after the end of its first fiscal year, and each fiscal year thereafter, as required by paragraph (b) of Rule 204-1.

3. Balance Sheet Required When Adviser Has Custody

Question: Item 14 requires the filing of an audited balance sheet if the adviser has custody or possession of clients' funds or securities or requires the

prepayment of advisory fees six months or more in advance and in excess of \$500 per client. If an adviser has custody or possession, or requires prepayment of fees, with respect to only a few of its clients, must the adviser nonetheless file an audited balance sheet in response to Item 14 of Part II?

Response: Yes. However, the audited balance sheet may be omitted from a brochure provided to a client as to whom the adviser does not have custody or possession of client funds or securities or does not require prepayment of fees of more than \$500 and for more than six months in advance.

4. Balance Sheet Required When Registrant Is a Subsidiary

Question: Can a wholly owned investment adviser subsidiary satisfy the balance sheet requirements of Item 14 of Part II by filing its parent corporation's consolidated balance sheet?

Response: No. A balance sheet for the actual registrant must be filed.

5. Balance Sheet Required When Affiliate Has Custody

Question: If an investment adviser is deemed to have custody or possession of clients' funds or securities because the funds or securities are held by an affiliate of the investment adviser, can the investment adviser satisfy the audited balance sheet requirement of Item 14 of Part II by filing an audited balance sheet of the affiliate instead of an audited balance sheet for the investment adviser itself?

Response: No. The balance sheet required by Item 14 of Part II is that of the registrant. However, it should be noted that custody by an affiliate of an investment adviser is not deemed to be custody by the investment adviser in all circumstances. Whether custody by an affiliate of the investment adviser will trigger the audited balance sheet requirement is a factual matter based on the actual relationship between the investment adviser and the affiliate. See Crocker Investment Management Corp. (pub. avail. April 14, 1978) for a discussion of the staff's view of the factors to be considered in determining whether the adviser is deemed to have custody.

F. Schedules to Form ADV

1. Schedule A and Shareholder Disclosure

Question: For purposes of completing Schedule A, when must an applicant

which is wholly or partially owned by a corporate parent provide information concerning shareholders of the parent, and how should such information be presented?

Response: As provided in Items 3 and 4 of Schedule A, all intermediate owners, as well as the ultimate owners of the applicant must be disclosed unless the intermediate owner is subject to the reporting requirements of sections 12 or 15(d) of the Exchange Act. Thus, if a corporation owns 5% or more of the adviser, disclosure is required of shareholders that own 5% or more of a class of equity security of that corporation. If one of these shareholders is a corporation, similar disclosure of that corporation would be required until the ultimate owner is disclosed. If the adviser is a partnership, disclosure is required of general partners or any limited or special partners that have contributed 5% or more of the partnership capital. If one of the partners is a corporation, disclosure of all 5% shareholders would be required until the ultimate owner is disclosed. If the intermediate corporation or partnership is subject to the reporting requirements of sections 12 or 15(d) of the Exchange Act, disclosure of that corporation's shareholders or partnership's partners is not required.

The method for indicating on Schedule A an indirect ownership interest in an investment adviser is to list the corporate parent's shareholders required to be so listed by virtue of their beneficial ownership of the adviser's equity securities. In the column designated "Ownership Code," the applicant should write "indirect" to indicate the indirect nature of the ownership interest for each listed shareholder.

2. Schedule A—Beginning Date

Question: Item 7 of Schedule A requires an applicant to disclose the "beginning date" of the relationship with the applicant for each of the persons reported on in the schedule. What does "beginning date" refer to?

Response: "Beginning date" refers to the earliest date on which a relationship arose with the adviser which was required to be disclosed on Schedule A. For example, if John Smith joined XYZ Advisers, Inc. in June 1978 as a research assistant and was promoted to vice president in August 1979, the first reportable event on Schedule A would have been Mr. Smith's promotion to vice president in August 1979, which date and relationship should have been disclosed on Schedule A to the Form ADV of XYZ Advisers, Inc. His

subsequent promotion to president in July 1980 involves a change in relationship which would be disclosed on Schedule A, although the beginning date would remain as August 1979.

3. Schedule D—Employment and Affiliation History

Question: In answering Item 6 of Schedule D, must an applicant list each person's complete employment or affiliation history for the past ten years, including each position held with a particular employer, or may he provide only the identities of each person's employers?

Response: It is necessary to list on Schedule D all places of employment for the past ten years, for each person for whom a Schedule D is filed.⁹ However, it is not necessary to enumerate each position held at each place of employment. It is sufficient to provide the last position held with each employer, so long as the period that such position was, or has been, held is disclosed in the column headed "Exact Nature of Connection or Employment."

Regulatory Flexibility Act

The views of the Commission's Division of Investment Management concerning Rules 203-1, 204-1, 204-3 and 206(4)-2 and Forms ADV and ADV-S are not rules and therefore are not subject to the Regulatory Flexibility Act [15 U.S.C. 600 et seq.]

List of Subjects in 17 CFR Part 276

Investment advisers, Securities.

Accordingly, Part 276 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding Investment Advisers Act Release No. IA-1000, statement of staff interpretive positions as to investment adviser disclosure and reporting requirements. Investment Advisers Act Release No. IA-767 is hereby removed.

By the Commission.

John Wheeler,

Secretary,

December 3, 1985.

[FR Doc. 85-28947 Filed 12-4-85; 8:45 am]

BILLING CODE 8010-01-M

* It should be noted that to the extent additional space is required to respond to Item 6 or any other item of Schedule D, the instructions to Form ADV require that an additional copy of Schedule D be used. (The staff will not object, however, if the blank space on page 1 of Schedule D is used for continuing responses to items 7 or 8 of Schedule D if the continued item is appropriately identified). Schedule F cannot be used as the continuation sheet for Schedule D.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 522, 524, and 558

Animal Drugs, Feeds, and Related Products; Tylosin

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of five supplemental new animal drug applications (NADA's) filed by Elanco Products Co. The supplements revise the product specifications of the tylosin ingredient.

DATES: Effective December 5, 1985. The Director of the *Federal Register* approves the incorporation by reference of certain publications in 21 CFR 520.2640, 522.2640 a and b, 524.2640, 558.625, and 558.630 effective on December 5, 1985.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly & Co., 740 South Alabama St., Indianapolis, IN 46285, filed supplements to their NADA's 12-491 (Tylosin Premix), 12-985 (Tylosin Injection), 13-076 (Tylosin Soluble Powder), 13-029 (Tylosin-Neomycin Eye Powder), and 41-275 (Tylosin-Sulfamethazine Premix), to state that the tylosin ingredient contains at least 95 percent tylosin (a combination of tylosin A, tylosin B, tylosin C and tylosin D), of which at least 80 percent is tylosin A. Tylosin is present in the above listed products either as the base or the phosphate salt.

Current specifications for tylosin define it as the antibiotic substance produced by growth of *Streptomyces fradiae* or the same antibiotic substance produced by any other means. Recent advances in analytical technology have allowed the sponsor to identify various chemical ingredients of the product, thereby establishing a standard of identity, strength, quality and purity, and of biological activity. The revised specifications reflect the chemical characterization of the major ingredient. The supplements are approved and the regulations in 21 CFR 520.2640, 522.2640 a and b, 524.2640, 558.625, and 558.630 are amended accordingly.

Approval of these changes to reflect technical characteristics of the approved active ingredient did not require new safety or effectiveness data. Therefore, a freedom of information summary for each NADA is not required. Under FDA's supplemental policy (42 FR 64367), reevaluation of the underlying safety and effectiveness data was not required.

The agency has determined under 21 CFR 25.24(d)(1)(iv) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Parts 520, 522, 524, 558

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 520, 522, 524, and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. In § 520.2640 by revising paragraph (a) to read as follows:

520.2640 Tylosin.

(a) *Specifications.* Tylosin is the antibiotic substance produced by growth of *Streptomyces fradiae* or the same antibiotic substance produced by any other means. Tylosin, present as the tartrate salt, conforms to the appropriate antibiotic standard. Tylosin contains at least 95 percent tylosin as a combination of tylosin A, tylosin B, tylosin C, and tylosin D of which at least 80 percent is tylosin A as determined by a method entitled "Determination of Factor Content in Tylosin by High Performance Liquid Chromatography," which is incorporated by reference. Copies are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

4. Part 522 is amended:

a. In § 522.2640a by revising paragraph (a) to read as follows:

§ 522.2640a Tylosin injection.

(a) *Specifications.* Each milliliter of sterile solution of 50 percent propylene glycol with 4 percent benzyl alcohol contains 50 to 200 milligrams of tylosin activity (as tylosin base). Tylosin conforms to the appropriate antibiotic standard. Tylosin contains at least 95 percent tylosin as a combination of tylosin A, tylosin B, tylosin C, and tylosin D of which at least 80 percent is tylosin A as determined by a method entitled "Determination of Factor Content in Tylosin by High Performance Liquid Chromatography," which is incorporated by reference. Copies are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * *

b. In § 522.2640b by revising paragraph (a) to read as follows:

§ 522.2640b Tylosin tartrate for injection.

(a) *Specifications.* The drug is a sterile powder containing a mixture of tylosin tartrate and sodium citrate which is reconstituted to provide 25 milligrams of tylosin activity per milliliter. Tylosin as the tartrate salt, conforms to the appropriate antibiotic standard. Tylosin contains at least 95 percent tylosin as a combination of tylosin A, tylosin B, tylosin C, and tylosin D of which at least 80 percent is tylosin A as determined by a method entitled "Determination of Factor Content in Tylosin by High Performance Liquid Chromatography," which is incorporated by reference. Copies are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * *

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

5. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

6. In § 524.2640 by revising paragraph (a) to read as follows:

§ 524.2640 Tylosin, neomycin eye powder.

(a) *Specifications.* Tylosin, neomycin eye powder contains 2 percent tylosin activity (as base), neomycin sulfate equivalent to 0.25 percent neomycin base, 1 percent piperocaine hydrochloride, 0.5 percent acriflavine neutral, and boric acid q.s. Tylosin conforms to the appropriate antibiotic standard. Tylosin contains at least 95 percent tylosin as a combination of tylosin A, tylosin B, tylosin C, and tylosin D of which at least 80 percent is tylosin A as determined by a method entitled "Determination of Factor Content in Tylosin by High Performance Liquid Chromatography," which is incorporated by reference. Copies are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

7. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

8. Part 558 is amended:

a. In § 558.625 by revising paragraph (a) to read as follows:

§ 558.625 Tylosin.

(a) *Specifications.* Tylosin is the antibiotic substance produced by growth of *Streptomyces fradiae* or the same antibiotic substance produced by any other means. Tylosin, present as the phosphate salt, conforms to the appropriate antibiotic standard. Tylosin contains at least 95 percent tylosin as a combination of tylosin A, tylosin B, tylosin C, and tylosin D of which at least 80 percent is tylosin A as determined by a method entitled "Determination of Factor Content in Tylosin by High Performance Liquid Chromatography," which is incorporated by reference. Copies are available from the Dockets Management Branch (HFA-305), Food

and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

b. In § 558.630 by revising paragraph (a) to read as follows:

§ 558.630 Tylosin and sulfamethazine.

(a) *Specifications.* Tylosin is the antibiotic substance produced by growth of *Streptomyces fradiae* or the same antibiotic substance produced by any other means. Tylosin, present as the phosphate salt, conforms to the appropriate antibiotic standard. Tylosin contains at least 95 percent tylosin as a combination of tylosin A, tylosin B, tylosin C, and tylosin D of which at least 80 percent is tylosin A as determined by a method entitled "Determination of Factor Content in Tylosin by High Performance Liquid Chromatography," which is incorporated by reference. Copies are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

Dated: November 29, 1985.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 85-28888 Filed 12-4-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 300

[Docket No. N-85-1569; FR-2172]

Government National Mortgage Association; List of GNMA Attorneys-in-Fact

AGENCY: Government National Mortgage Association, HUD.

ACTION: Rule-related notice.

SUMMARY: This document updates the current list of persons appointed attorneys-in-fact by the Government National Mortgage Association (GNMA). Attorneys-in-fact are authorized to act for GNMA by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs. These appointments assist GNMA in carrying out its responsibilities under the National Housing Act.

EFFECTIVE DATE: December 5, 1985.

FOR FURTHER INFORMATION CONTACT:

John Maxim, Associate General Counsel, Insured Housing and Finance, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W. Washington, DC 20410. Telephone (202) 755-6274. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Government National Mortgage Association (GNMA) periodically approves staff members of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to be delegated signatory authority to act in GNMA's behalf as attorneys-in-fact.

Until recently, lists of persons appointed to act have appeared in the Code of Federal Regulations (see 24 CFR 300.11 (c) and (d), 1983 edition). In related documents published on August 12, 1983 (see 48 FR 36572, 36573) GNMA announced that it was removing these lists from the CFR, changing the procedure of announcing appointments to a notice document, and publishing a complete list of persons currently appointed to act as attorneys-in-fact. The rule removing the lists from the CFR, as well as the complete list of attorneys-in-fact, was effective on October 11, 1983. Additional changes to the list of persons appointed attorney-in-fact were published on December 29, 1983 (48 FR 57371); May 29, 1984 (49 FR 22278); August 27, 1984 (49 FR 33872); November 15, 1984 (49 FR 45128); and September 16, 1985 (50 FR 37523).

This notice today announces changes to the list of persons authorized to act as attorneys-in-fact. The changes include additions to and deletions from the Federal National Mortgage Association list. To enhance the usability of these notices, the Department has decided to republish the entire list of attorneys-in-fact each time changes are made.

Accordingly, the following lists represent all persons currently appointed as attorneys-in-fact delegated signatory authority to act in GNMA's behalf:

I. Staff members of the Federal National Mortgage Association, a Government-Sponsored Private Corporation, Appointed Attorneys-in-Fact

Name and Region

Leo E. Abueg, Los Angeles, CA
Charlotte Adelman, Los Angeles, CA
Robert E. Allen, Los Angeles, CA
Angelina P. Alleva, Philadelphia, PA
Ellen W. Allison, Atlanta, GA
Pam Andrus, Los Angeles, CA
David P. Antczak, Chicago, IL
Victoria L. Arrington, Chicago, IL
Glenn T. Austin, Jr., Atlanta, GA
J.J. Bacchus, Atlanta, GA

Irene S. Baggio, Philadelphia, PA
Darlene Bagley, Atlanta, GA
Susan L. Bale, Los Angeles, CA
Lynne Ballew, Atlanta, GA
J.C. Bellinger, Atlanta, GA
Frances E. Bennett, Atlanta, GA
James H. Benson, Los Angeles, CA
Renee Y. Berryman, Dallas, TX
E.N. Biggerstaff, Atlanta, GA
James R. Blakley, Los Angeles, CA
Norman T. Bolas, Los Angeles, CA
W.R. Bowen, Los Angeles, CA
W. James Bradley, Washington, DC
Stephen M. Brent, Los Angeles, CA
Joseph E. Brody, Chicago, IL
Craig J. Bromann, Chicago, IL
Larry W. Brown, Dallas, TX
Rosemary M. Brown, Washington, DC
Patricia L. Burgess, Atlanta, GA
Burleigh O. Burshem, Washington, DC
Rena L. Busby, Los Angeles, CA
J.L. Busselle, Dallas, TX
Roland B. Bynum, Los Angeles, CA
David Byrd, Atlanta, GA
Donna M. Cabrera, Los Angeles, CA
Dennis G. Campbell, Philadelphia, PA
E. P. Carr, Atlanta, GA
James S. Cash, Atlanta, GA
Robert A. Chambers, Atlanta, GA
Heinrich F. Charles, Los Angeles, CA
Mary Churchwell, Dallas, TX
Russell B. Clifton, Washington, DC
John M. Coan, Washington, DC
Vincent Coletti II, Philadelphia, PA
Bettye Cook, Los Angeles, CA
Diane E. Cozad, Los Angeles, CA
Jean V. Cunniff, Chicago, IL
Edward F. Czubernat, Chicago, IL
Nitin J. Dave, Atlanta, GA
John C. Diebel, Chicago, IL
James E. Domenico, Chicago, IL
Lawrence J. Dondero, Jr., Philadelphia, PA
Dennis D. Downey, Dallas, TX
Elizabeth A. Downing, Los Angeles, CA
Samuel A. Duca, Philadelphia, PA
Wandra Durham, Atlanta, GA
J. Ellis Dykes, Atlanta, GA
Joseph R. Elred, Philadelphia, PA
Julietta England, Los Angeles, CA
David J. Evans, Atlanta, GA
R. Douglas Ezell, Atlanta, GA
Leon Fine, Philadelphia, PA
Carlton T. Foster, Jr., Atlanta, GA
Robert R. Foster, Philadelphia, PA
Jimmy L. Gallahar, Atlanta, GA
Hettye D. Gates, Atlanta, GA
Robert R. Glinski, Philadelphia, PA
James D. Grady, Jr., Philadelphia, PA
John J. Hagerty, Philadelphia, PA
Ann B. Hamilton, Philadelphia, PA
Phillip E. Harrington, Chicago, IL
Mark S. Haney, Los Angeles, CA
Robert E. Haren, Chicago, IL
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II. Staff Members of the Federal Home Loan Mortgage Corporation, Created Under the Laws of the United States, Appointed Attorneys-in-Fact

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Dated: November 13, 1985.

Glenn R. Wilson, Jr.,

President, Government National Mortgage Association.

[FR Doc. 85-28902 Filed 12-4-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD9-85-017]

Special Anchorage Area; Neenah Harbor, Neenah, WI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a second Special Anchorage in the Northwest portion of Neenah Harbor adjacent to and south of the Theda Clark Regional Medical Center at the request of the Neenah Wisconsin Harbor Commission. A lack of mooring space for vessels with drafts from 3.5' to 5' in Neenah Harbor creates the need for designating this area as a

vessel anchorage to accommodate these type vessels.

EFFECTIVE DATE: January 6, 1986.

FOR FURTHER INFORMATION CONTACT:

Ensign George H. Burns, 1240 East Ninth Street, Cleveland, Ohio 44199 Telephone (216) 522-3919.

SUPPLEMENTARY INFORMATION: On Thursday, September 12, 1985 the Coast Guard published a notice of proposed rule making in the *Federal Register* for these regulations (50 FR 37237). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are ENS George H. Burns III, Marine Port and Environmental Safety Branch, project officer and LCDR M. A. Leone, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

There were no comments received concerning this regulation. The Neenah Harbor Commission, in Neenah, Wisconsin, has requested and the Coast Guard is designating a Special Anchorage Area in the northwest portion of Neenah Harbor adjacent to and south of the Theda Clark Regional Medical Center. The Special Anchorage Area is for up to fifteen sailboats, typically with 3.5 to 5 foot drafts, ranging in length up to at least 30 feet. Excluding the navigation channel, this is one of the few areas of the harbor with sufficient depth for this type of boat. Such boats have, in fact, anchored in this area during the summer months for at least the last ten years. Access to the area is through a public walkway leading from the end of Clark Street. Approval of this project was given by the Neenah City Council at its regular council meeting on September 19, 1984. Use of the Special Anchorage Area will be for the general public. This area will be under the administration of the Neenah Harbor Commission.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This proposal was approved by the Neenah, Wisconsin City Council on 19 September 1984. Additionally, vessels have used this area as an anchorage for many years.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

PART 110—[AMENDED]

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. 33 CFR Part 110 is amended by revising § 110.79a to read as follows:

§ 110.79a Neenah Harbor, Neenah, Wis.

(a) Area 1. The area of Neenah Harbor south of the main shipping channel within the following boundary: A line beginning at a point bearing 117°5', 1,050 feet from the point where the southeasterly side of the First Street/Oak Street Bridge crosses the south shoreline of the river; thence 254°, 162 feet; thence 146°, 462 feet; 164°, 138 feet; 123°, 367 feet; 068°, 400 feet; 044°, 400 feet; thence 320°, 107 feet; thence 283°, 1,054 feet to the point of beginning.

(b) Area 2. Commencing at a point where the west line of Second Street extended meets the north edge of the harbor, thence south to intersect the north edge of the channel at latitude 44°11'04.2" North, longitude 88°27'13.2" West, thence northwesterly to a point at latitude 44°11'06.3" North, longitude 88°27'16.4" West, thence north to the easterly end of the Neenah Dam Spillway.

Note.—An ordinance of the City of Neenah, Wis., requires approval of the Neenah Police Department for the location and type of individual moorings placed in this special anchorage area.

Dated: December 2, 1985.

A.M. Danielsen,

Real Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 85-28909 Filed 12-4-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP San Diego Regulation 85-15]

Security Zone Regulations; San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone in San Diego Bay, California, consisting of the water area within 250 yards (229 meters) of U.S. Navy mooring buoy FM19, near the east end of Harbor Island. This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective on 27 November 1985. It terminates on 27 March 1986 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 293-5860.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after *Federal Register* publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to secure the interest of the United States.

Drafting Information

The drafters of this regulation are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The events requiring this regulation will occur at various times between 27 November 1985 and 27 March 1986. They involve mooring of naval ships at U.S. Navy mooring buoy FM19, shown as buoy "19" near the east end of Harbor Island on Chart 18773. Pleasure vessels routinely anchor in the area around this buoy and render it unavailable to naval vessels while they are anchored there. Naval vessels moored at this buoy can endanger smaller vessels anchored within a 250 yard radius of this buoy. This security zone is intended to protect naval and civilian vessels, and to ensure that this mooring is available to the naval vessels involved. The security zone is needed to protect persons and property from sabotage or other

subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Notices to Mariners will be issued to advise the public of the specific times when this security zone is active. They will be published as Local Notices to Mariners if time permits, or will be broadcast on VHF-FM marine radio using current frequencies for broadcast of Coast Guard Notices to Mariners.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. In Part 165, a new § 165.T1102 is added to read as follows:

§ 165.T1102 Security Zone: San Diego Bay, California.

(a) **Location.** The following area is a security zone: The water area within 250 yards (229 meters) of U.S. Navy mooring buoy FM19, near the east end of Harbor Island, San Diego, California.

(b) **Effective Date.** This regulation becomes effective on 27 November 1985. It terminates on 27 March 1986, unless sooner terminated by the Captain of the Port. The Coast Guard will issue Notices to Mariners to announce the specific times when the security zone is active.

(c) **Regulations.** In accordance with the general regulations in 165.33 of this Part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: November 27, 1985.

E.A. Harmes,

Commander, U.S. Coast Guard Captain of the Port, San Diego, California.

[FR Doc. 85-28908 Filed 12-4-85; 8:45 am]

BILLING CODE 4910-14-M

**GENERAL SERVICES
ADMINISTRATION****41 CFR Part 101-41**

[FPMR Amdt. G-75]

**Property Management; Notice of
Interest Assessment—Standard Form
1170, Redemption of Unused Tickets****AGENCY:** Office of the Comptroller, GSA.
ACTION: Final rule.

SUMMARY: The Debt Collection Act of 1982, 31 U.S.C. 3718, et seq., authorizes the Government to collect interest on debts owed the United States. This amendment to the regulations adds a notice to Standard Form (SF) 1170, Redemption of Unused Tickets, advising carriers that interest and other penalties will be assessed on refunds of unused passenger tickets if payment is not made by carriers within 30 days of the issuance of SF 1170. The addition of this notice to the form will provide incentive to expedite refunds to the United States by the carriers.

EFFECTIVE DATE: December 5, 1985.

FOR FURTHER INFORMATION CONTACT:
John W. Sandfort, Chief, Regulations,
Procedures and Review Branch, Office
of Transportation Audits (202-788-3014).

SUPPLEMENTARY INFORMATION: Since passage of the Debt Collection Act of 1982 [Pub. L. 97-365], Federal agencies have been permitted to assess and collect interest on debts owed the United States. Passenger ticket coupons, purchased for official travel by Federal employees, that are totally or partially unused upon return to the carriers constitute debts due the United States. Refund by the carriers is usually made through the issuance of SF 1170 to the carrier by the Federal agency. The notice printed on their SF 1170 will serve as a reminder to the carrier industry and encourage prompt refund to the United States. The notice will read:

This debt is now due. Payment should be made promptly. Interest on this debt accrues from the date of this notice. Such interest becomes payable and this debt becomes subject to administrative costs and penalty charges, if it is not paid within 30 days of the date of this notice. In order to avoid such interest, administrative costs, and penalty charges, the amount due must be paid within 30 days of the date of this notice. If necessary, it is the intention of the agency to which refund is to be made to collect this claim by administrative setoff. You may inspect and copy agency records pertinent to this debt, obtain an agency review of the decision related to the debt, and propose a written agreement with the agency for the repayment of the debt.

This rulemaking is published as a final rule since it is exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553) and the Regulatory Flexibility Act (5 U.S.C. 603, 604) because of the exception for Government contract matters contained therein. The proposed wording is a statement of the application of existing law, the Debt Collection Act of 1982, *supra*. GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been made. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-41

Air carriers, Accounting, Claims,
Passenger services, Transportation.

Title 41, Part 101-41 of the Code of
Federal Regulations is amended as
follows:

**PART 101-41—TRANSPORTATION
DOCUMENTATION AND AUDIT**

1. The authority citation for 41 CFR
Part 101-41 continues to read as follows:

Authority: 31 U.S.C. 3726, and 40 U.S.C.
480(c).

**Subpart 101-41.49 Illustrations of
Forms**

2. Section 101-41.4901-1170, is
amended by revising page 2 of Standard
Form 1170.

**§ 101-41.4901-1170 Standard Form 1170,
Redemption of Unused Tickets.**

(b) Page 2 of Standard Form 1170.

Note.—The form illustrated in this § 101-
41.4901-1170 is filed with the original
document and does not appear in this
volume.

Dated: November 4, 1985.

T. C. Golden,

Administrator of General Services.

[FR Doc. 85-28879 Filed 12-4-85; 8:45 am]

BILLING CODE 6520-AM-M

41 CFR Part 101-41

[FPMR Amdt. G-76]

**Administrative Offset and Interest
Assessment on Transportation
Related Claims****AGENCY:** Office of the Comptroller, GSA.**ACTION:** Final rule.

SUMMARY: This rulemaking amends the Federal Property Management Regulations (FPMR) to permit Government agencies to collect by administrative offset when carriers fail to make refunds for totally unused passenger tickets under 41 CFR 101-41.210, and other transportation related ordinary debts. It also allows agencies to assess interest and penalties on delinquent refunds due the Government for totally unused passenger tickets, and other transportation related ordinary debts. This order also establishes the procedures for collecting transportation related claims arising out of GSA's transportation audit (31 U.S.C. 3726). These revised procedures will improve the efficiency of Governmentwide efforts to collect debts owed the United States, as prescribed by the Federal Claims Collection Act of 1968, as amended (31 U.S.C. 3711-3719), and the Federal Claims Collection Standards jointly published by the U.S. Department of Justice and the General Accounting Office (49 FR 8889, March 9, 1984).

EFFECTIVE DATE: December 5, 1985.

FOR FURTHER INFORMATION CONTACT:
John W. Sandfort, Chief, Regulations,
Procedures, and Review Branch, Office
of Transportation Audits, 202-788-3014.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Background

A Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on April 11, 1985 (50 FR 14261).

Discussion of Major Comments. The following summarizes major comments, suggestions, and our determinations and actions taken. We received five comments to the NPRM: two Federal agencies, two carriers' associations and one carrier. One agency suggested that several clarifying amendments and editorial changes be made to 41 CFR 101-41.210. We have adopted all but one of those suggestions and have also clarified instructions for processing exchanged or returned tickets and unused or unreturned tickets purchased under a Government Travel System (GTS) account or with a Government employee Diners Club charge card. Both agencies asked that use of Standard Form 1170, Redemption of Unused Tickets, not be required when recovering refunds for unused tickets purchased from Government Travel Management Centers (TMC). We believe that mandatory use of SF 1170's is necessary. Sound accounting practices require the establishment of receivable records for unused ticket refunds due the Government. Mandatory use of the SF 1170 serves that purpose while avoiding a proliferation of nonstandardized, potentially confusing and inadequate accounting forms and procedures.

The two associations objected to interest assessment provisions planned for the Government Bill of Lading (GBL) and Government Transportation Request (GTR) as referenced in § 101-41.502(b)(2) of this rulemaking. These GBL/GTR interest assessment provisions were proposed in two earlier NPRM's, at which time these same associations made their objections known. We addressed their objections in final rules published July 29, 1985 (50 FR 30705/30710).

One association has misinterpreted 41 CFR 101-41.210-5 as permitting carriers 90 days to make refund on unused tickets. Instructions for carrier processing of SF 1170 refunds are contained in 41 CFR 101-41.210-3a. Carriers must promptly process SF 1170's (unused ticket claims) whether or not the related GTR has been submitted or paid. If carriers fail to make refund within 30 calendar days from the date of issuance of SF 1170 or to provide satisfactory explanation as to why no refund is due, the Federal Claims Collection Standards specify that agency collection action be taken including administrative offset. (See 41 CFR 101-41.210-5(b) of this rule).

One association requested that interest be waived during protest of a claim. That request has not been adopted. GSA believes a waiver would be contrary to the efficient collection of debts owed the Government and might even encourage the filing of nonsubstantive protests simply to delay the debt collection process.

Both associations contend that GSA either ignored or did not comply with the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). GSA's position is that this rulemaking is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 603(a)) since the Act's applicability is subject to the contract exemption provisions of 5 U.S.C. 553(a)(2).

One association alleged that the deduction provisions of the NPRM are illegal, contending that 31 U.S.C. 3726(b)(1), as amended in 1984, limits air carrier deductions to only foreign air transportation. GSA's position is that 31 U.S.C. 3726(b)(2) provides an "equivalent arrangement or exception" which encompasses domestic air transportation and therefore allows deductions to be made.

The carrier requested that passenger name, GTR number, and ticket number be furnished with refund requests and that the charges not be deducted from a future Government disbursement. When properly completed, SF 1170 now provides passenger name, GTR number, and ticket number, and if carrier refunds are made within 30 calendar days, proposed 41 CFR 101-41.210 prohibits agencies from revising carrier bills to recover the value of exchanged, returned, or unused tickets. If the carrier receives improperly completed SF 1170's or has its bills revised by agencies except as provided in proposed 41 CFR 101-41.210-5 and -6, specific instances should be brought to the attention of GSA for separate corrective action.

List of Subjects in 41 CFR Part 101-41

Air carriers, Accounting, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

For the reasons set forth in the preamble, 41 CFR 101-41 is amended as follows:

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101-41 continues to read:

Authority: 31 U.S.C. 3711-3719 and 3726, 40 U.S.C. 486(c).

2. The table of contents for Part 101-41 is amended by revising or adding the following:

- | | |
|---------------|--|
| 101-41.210 | Ticket refund procedures. |
| 101-41.210-1 | Exchanged or returned tickets. |
| 101-41.210-2 | Unused or unreturned tickets. |
| 101-41.210-3 | Agency processing of SF 1170 claims. |
| 101-41.210-3a | Carrier processing of SF 1170 claims. |
| 101-41.210-5 | Agency processing of SF 1170 claims for which the carrier failed to refund or otherwise satisfy the claim. |
| 101-41.501 | Definitions. |
| 101-41.502 | Examination of payments and initiation of collection action and assertion of claims. |
| 101-41.503 | Refunds and/or protests to claims. |
| 101-41.505 | Disposition of collections. |
| 101-41.507 | Disclosure to consumer reporting agencies and referrals to collection agencies. |

Subpart 101-41.2—Passenger Transportation Services Furnished for the Account of the United States

3. Sections 101-41.210 and 101-41.210-1 are revised as follows:

§ 101.41.210 Ticket refund procedures.

Agencies shall not revise carrier bills or require carriers to rebill items. Sections 101-41.210-5 and -6, respectively, contain procedures for recovering from carriers the value of exchanged, returned, or unused tickets when the carrier fails to make refund or otherwise satisfy an SF 1170 claim, or involves unused transportation services billed by foreign-flag carriers.

§ 101-41.210-1 Exchanged or returned tickets.

(a) Exchanged or returned tickets are tickets in a carrier's possession for which the carrier has issued a lesser valued ticket, receipt, or refund application showing a refund due the U.S. Government. Agencies shall not submit an SF 1170 to the carrier to claim a refund for the unused value of an exchanged or returned ticket. Carriers are required to make refunds to the "bill charges to" office indicated on the GTR within 60 calendar days from date of ticket exchange. Agencies must provide travelers with a "bill charges to" address by attaching a copy of the GTR or some other document containing the information to the ticket or to the travel authorization. If carriers cannot identify the issuing agency, refunds shall be sent to GSA (BWCA), Washington, DC 20405. These refunds are subject to the following procedures:

(1) Carriers must include the traveler's name, GTR number, ticket number,

amount being refunded, and any other information pertinent to the refund.

(2) Agencies may make written inquiry to the carrier to obtain the above information for the purpose of recovering the refund from GSA.

(b) When accepting exchanged or returned tickets purchased under a GTS account, the carrier must issue a receipt to the purchasing office showing a credit is due the agency.

(c) When accepting exchanged or returned tickets purchased with a Government employee Diners Club charge card, the carrier must issue a receipt to the traveler showing a credit is due the traveler.

4. Section 101-41.210-1a is revised as follows:

§ 101-41.210-1a Agency monitoring and processing of exchanged ticket refunds.

Agencies awaiting exchanged or returned ticket carrier refunds shall:

(a) Obtain carrier refund applications or receipts from travelers for accounting purposes.

(b) Record and deposit refunds in conformity with agency fiscal procedures.

(c) Forward carrier refund applications and any other pertinent information to GSA (BWCA).

Washington, DC 20405, if refund has not been received within 90 calendar days of date of ticket exchange or return.

5. Section 101-41.210-2 is revised as follows:

§ 101-41.210-2 Unused or unreturned tickets.

Unused or unreturned tickets are those which have not been used for passenger service, exchanged, or returned to a carrier. Agencies shall demand the refund value of these tickets from carriers through the use of an SF 1170, Redemption of Unused Tickets. A separate SF 1170 must be prepared for each GTR, though more than one ticket or adjustment transaction may be related to that GTR. Each ticket must be listed on the SF 1170. Unused or unreturned tickets purchased under a GTS account must be returned to the appropriate Federal agency office, the Travel Management Center (TMC), or Scheduled Airline Traffic Office (SATO) that furnished the airline ticket. The TMC or SATO must issue a receipt to the agency showing a credit is due the agency. Unused or unreturned tickets purchased with a Government employee Diners Club charge card must be returned by the traveler to the TMC, SATO, or air carrier that issued the original ticket. The TMC, SATO, or air carrier must issue a receipt to the

traveler showing a credit is due the employee. For procedures covering unused transportation services billed by foreign-flag carriers, see § 101-41.210-6.

6. Section 101-41.210-3 is amended by revising the section title as follows:

§ 101-41.210-3 Agency processing of SF 1170 claims.

7. Section 101-41.210-3a is amended by revising paragraphs (a) and (b) as follows:

§ 101-41.210-3a Carrier processing of SF 1170 claims.

(a) Carriers must include the traveler's name, GTR number, the ticket number, the amount being refunded, and any other information pertinent to the refund.

(b) Agencies may make written inquiry directly to the carrier to obtain the above information for the purpose of recovering refunds from GSA.

8. Section 101-41.210-4 is revised as follows:

§ 101-41.210-4 Agency processing of SF 1170 refunds.

Upon return of the original SF 1170 with the refund, the agency shall record and deposit the refund in conformity with its fiscal procedures; and, if the refund has previously been reported to GSA as uncollected under § 101-41.210-5, shall, within 30 calendar days of receipt thereof, forward the original SF 1170, together with any advice from the carrier regarding the basis of the refund, to the General Services Administration (BWCA), Washington, DC 20405.

9. Section 101-41.210-5 is revised as follows:

§ 101-41.210-5 Agency processing of SF 1170 claims for which the carrier failed to refund or otherwise satisfy the claim.

(a) Partial tickets—A partial ticket is one in which one or more (but not all) coupons have been used. If, within 90 calendar days from the date of issuance of SF 1170, the carrier has failed to make refund for the unused portion of a partially used ticket or to furnish a satisfactory explanation as to why no refund is due, the agency shall transmit the triplicate copy of the SF 1170 and all related correspondence to the General Services Administration (BWCA), Washington, DC 20405, for a proper action. An agency may remove from its active accounts those debts referred to GSA under this section. This shall be recorded in a manner sufficient to support its removal from agency accounting records. Should a refund or response be received from the carrier after referring the claim to GSA, the

agency shall, within 30 calendar days of receipt thereof, forward the original SF 1170, together with any advice from the carrier regarding the basis of the refund, to the General Services Administration (BWCA) in accordance with 101-41.210-4.

(b) Complete tickets—A complete ticket is one in which no coupons have been used. If, within 30 calendar days from the date of issuance of SF 1170, the carrier has failed to make refund for a complete ticket or to furnish a satisfactory explanation as to why no refund is due, the agency shall take action to collect the debt under the Federal Claims Collection Standards, including administrative offset, if necessary.

Subpart 101-41.5—Claims by the United States Relating to Transportation Services

10. Section 101-41.500 is revised as follows:

§ 101-41.500 Scope and applicability of subpart.

This subpart sets forth procedures applicable to the assertion of claims by the United States that arise out of freight and passenger transportation services furnished for the account of the United States, the consideration and disposition of protests thereto, the collection of claims by administrative offset and by other means, the imposition of interest, penalties, and the disposition of amounts collected.

11. Sections § 101-41.501, 101-41.502, and 101-41.503 are revised as follows:

§ 101-41.501 Definitions.

(a) The term "overcharges" as used herein means charges for transportation services in excess of those applicable thereto under tariffs lawfully on file with Federal or State transportation regulatory agencies, and charges in excess of those applicable thereto under rates, fares, and charges established pursuant to section 10721 of the Revised Interstate Commerce Act, as amended (49 U.S.C. 10721), or other equivalent contract, arrangement, or exemption from regulation.

(b) The term "ordinary debt" as used herein means any administratively determined transportation-related debt other than an overcharge. Ordinary debts include, but are not limited to, payments for transportation services ordered and not furnished duplicate payments, and those involving loss and/or damage to property transported by carriers.

(c) The term "claim" as used herein means any demand by the United States

for the payment of overcharges, ordinary debts, fines, civil penalties, special charges, or interest.

§ 101-41.502 Examination of payments and initiation of collection action and assertion of claims.

(a) *Examination of payments.* (1) Carrier bills and supporting documents that represent payments made by agency disbursing officers for freight and passenger transportation services shall be forwarded to the General Services Administration (BWAA/C), Washington, D.C. 20405, for audit. For the purpose of determining whether a claim exists, GSA will consider:

(i) The document ordering the services furnished to determine the contractual basis upon which the rights of the Government and the carrier are based;

(ii) The pertinent tariffs, special or reduced rate quotations, contracts, or agreements, to determine the proper charge for the services rendered;

(iii) Decisions of the courts, regulatory bodies, and the Comptroller General affecting the rates, fares, and charges; and

(iv) Information furnished by transportation officers, travelers, or agencies.

(2) The General Services Administration is obligated to honor a carrier bill for charges properly due. However, GSA has a concurrent responsibility to question or disapprove that part of a payment to a carrier which is found to be illegal or mathematically incorrect or which is not accompanied by documented support establishing an obligation of the United States.

(b) *Notice of Overcharge.* (1) A GSA notice of overcharge is issued when it is determined that a carrier has been paid a sum in excess of that proper for the services rendered. This notice, which states a debt owned to the United States, sets forth: the amount paid; the basis for the proper charge for each Government bill of lading or Government transportation request; and cites applicable tariff references and other data relied upon to support the statement of difference. A separate notice of overcharge is stated for each Government bill of lading or Government transportation request and mailed to the billing carrier.

(2) If the GBL or the GTR contains a contract provision relating to the assessment of interest, then interest shall be charged under the contract terms thereof. If neither contains such a provision, then interest shall be assessed under the Debt Collection Act (31 U.S.C. 3717) and the Federal Claims Collection Standards, 4 CFR Parts 101-

105, and regulations published in 41 CFR Parts 105-55.

(c) *Notice of Indebtedness.* A GSA notice of indebtedness is issued when it is determined that an ordinary debt is due the United States. This notice sets forth the basis for the debt, the debtor's rights, interest, penalty and other consequences of nonpayment. The debt is due immediately. Interest accrues 30 calendar days after the mailing of the notice of indebtedness and is subject to interest charges, penalties and administrative costs as prescribed by 31 U.S.C. 3717.

§ 101-41.503 Refunds and/or protests to claims.

(a) Carriers are requested to promptly refund amounts due the United States. Checks shall be made payable to the "General Services Administration" and mailed to the General Services Administration (BWCA), Washington, DC 20405.

(b) A carrier that disagrees with a claim may protest by letter to the General Services Administration (BWCA), Washington, D.C. 20405. Since each claim is processed as a separate account receivable, the carrier shall use a separate letter for each claim being protested. The carrier shall present the basis for its protest and submit either the original or a legible copy of all documents substantiating its position. If the carrier believes that an amount less than that claimed is due, it should submit a check for the amount due, together with a full explanation of the reasons for believing the balance is not due. With reference to an ordinary debt, which is the subject of a notice of indebtedness, the carrier may: inspect and copy the Government's records related to the claim; seek review by GSA of the claim decision; and/or enter into a written agreement for the payment of the claim. GSA will acknowledge receipt of each letter containing a substantive protest and upon completion of consideration will notify the carrier whether the claim has been sustained, amended, or canceled. Repetitious letters of protest will not serve to preclude the collection of claims found due.

12. Section 101-41.504 is revised as follows:

§ 101-41.504 Collection action by other means.

When a carrier fails to pay or protest a claim and GSA determines that the amount is still due the United States, GSA will effect collection by other means, as set forth in paragraphs (a) through (d) of this section.

(a) When GSA has an indebted carrier's claim against the Government on hand for direct settlement, GSA will apply all or any portion of the amount determined to be due the carrier to the Government's outstanding claim, in accordance with the Federal Claims Collection Act.

(b) When the action outlined in paragraph (a) of this section cannot be taken, GSA will instruct one or more Government disbursing offices to deduct the amount due the United States from an unpaid carrier's bill. A 3-year limitation applies on the deduction of overcharges from amounts due a carrier or forwarder (31 U.S.C. 3726); and, a 10-year limitation applies on the deduction of ordinary debts (31 U.S.C. 3716).

(c) When collection cannot be effected through either of the above procedures, GSA normally sends two additional demand letters to the indebted carrier requesting payment of the amount due within a specified time. Lacking satisfactory response, GSA may place a complete stop order against amounts otherwise payable to the indebted carrier by placing the name of that carrier on the Department of the Army "List of Contractors Indebted to the United States."

(d) When actions to effect collection, as stated in the preceding paragraphs (a) through (c), are unsuccessful, GSA may report the debt to the Department of Justice for collection, litigation, and related proceedings, as prescribed in 4 CFR Part 105.

13. Section 101-41.505 is amended by revising the section title and paragraph (a) as follows:

§ 101-41.505 Disposition of collections.

(a) Amounts collected by GSA to liquidate debts asserted in the audit of transportation accounts are generally deposited in the Treasury of the United States as a credit to the appropriation or fund accounts against which the original payments were charged. When the accounts are not readily identifiable on the basic procurement documents, the collected amounts are deposited to miscellaneous receipts. Collections identified with certain Department of Defense activities are deposited to the appropriate military management fund rather than to the account from which the original payment was made.

14. Section 101-41.506 is amended by revising paragraphs (a) and (c) and adding new paragraphs (d), (e), (f), and (g). *

§ 101-41.506 Transportation debts administratively determined to be due the United States.

(a) Under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711, et seq.), the Comptroller General and the Attorney General have joint responsibility for promulgating standards for the collection, compromise, termination or suspension of collection action on any debts determined to be due the United States. Regulations defining agency responsibilities for collecting amounts determined to be due the United States, establishing principles governing agency collection procedures for reporting uncollectible debts to the General Accounting Office (GAO) or the Department of Justice, are found in 4 CFR Parts 101 through 105 and in the GAO Policy and Procedures Manual for Guidance of Federal Agencies.

(c) The Director, Office of Transportation Audits, has the authority and responsibility to audit and settle all accounts arising from the payment for domestic and foreign freight and passenger transportation services furnished for the account of the United States under the provisions of 31 U.S.C. 3726 without regard to monetary limitations. He/she initiates actions on claims arising from his/her audit and settlement activities.

(d) Whenever feasible, debts owed to the United States, together with interest, administrative charges and penalty charges, should be collected in full. If the debtor requests installment payments, the Director, Office of Transportation Audits, shall determine the financial hardship of the debtor and may arrange installment payments.

(e) All liquidated or certain claims (those upon which all audit procedures under 31 U.S.C. 3726 have been completed) over \$20,000, exclusive of interest, penalties and administrative charges which cannot be collected, shall be referred to the Department of Justice.

(f) The Director, Office of Transportation Audits, may terminate collection action on, or settle by compromise at less than the principal amount liquidated or certain claims not exceeding \$20,000 exclusive of interest, penalties and administrative charges if:

(1) The debtor shows an inability to pay the full amount within a reasonable time;

(2) Complete collection is not enforceable within a reasonable time;

(3) The amount of the claim does not justify the foreseeable collection cost; or

(4) There are uncertain litigative probabilities.

(g) The Director, Office of Transportation Audits, shall prescribe internal regulations for the guidance of GSA personnel collecting claims arising from the audit of transportation accounts.

15. Section 101-41.507 is added as follows:

§ 101-41.507 Disclosure to consumer reporting agencies and referrals to collection agencies.

GSA may disclose delinquent debts to consumer reporting agencies and may refer delinquent debts to debt collection agencies under provisions of the Federal Claims Collection Act, and § 105-55.010 of these Regulations.

Dated: November 18, 1985.

T.C. Golden,

Administrator of General Services.

[FR Doc. 85-28831 Filed 12-4-85; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

(Docket No. HM-172B; Amdt. No. 173-194)

Cylinder Retester Identification Procedures

Correction

In FR Doc. 85-26499, beginning on page 46054 in the issue of Wednesday, November 6, 1985, make the following corrections:

On page 46055, second and third columns, § 173.34:

1. In the introductory text of paragraph (e), the first and third lines, "period" should read "periodic".

2. In paragraph (e)(1), fifth line, insert "by" after "test".

3. In paragraph (e)(1)(iv), tenth line, "in" should read "is".

BILLING CODE 1605-01-M

Federal Highway Administration

49 CFR Part 391

(BMCS Docket No. MC-111; Notice No. 83-16)

Qualifications of Drivers—Handicapped Driver Waiver Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety

Regulations to clarify an application requirement of the Handicapped Driver Waiver Program. It has been FHWA policy to require a Waiver Program applicant with an upper limb amputation or an upper limb impairment to be capable of demonstrating precision prehension and power grasp prehension. This action incorporates that policy into the rule.

EFFECTIVE DATE: January 6, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 755-1011; or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The qualifications for drivers who drive in interstate or foreign commerce are found in 49 CFR Part 391. Among these qualifications are certain physical standards (49 CFR 391.41). Two of the physical standards concern drivers who have had an amputation of a limb or who have a limb impairment (49 CFR 391.41(b) (1) and (2)). These two conditions are subject to the waiver provisions of § 391.49. Waiver of certain physical defects.

On December 19, 1984, the FHWA published a notice of proposed rulemaking (NPRM) entitled "Qualifications of Drivers—Handicapped Driver Waiver Program," Docket No. MC-111, Notice No. 84-6 (49 FR 49313). The NPRM requested comments on a proposal to clarify an application requirement of the Waiver Program. The proposed application requirement required an applicant with an upper limb amputation or upper limb impairment to be capable of demonstrating precision prehension (e.g., manipulating vehicle controls and switches) and power grasp prehension (e.g., holding and turning the steering wheel) in each upper limb separately. In effect, it required the use of a limb prosthesis (artificial limb) for an upper limb amputee applicant. An upper limb-impaired applicant is required to wear an orthotic device (brace-like device) if he or she is not capable of demonstrating precision prehension and power grip prehension in each upper limb separately without a device.

The NPRM was issued because some confusion existed among applicants who were unaware of the FHWA's Waiver Program policy that required a demonstration of precision prehension and power grasp prehension in each

upper limb separately. This FHWA policy was initiated because of work done by the Krusen Center for Research and Engineering of the Moss Rehabilitation Hospital in Philadelphia, Pennsylvania. The Krusen Center developed a booklet in 1977, "Limb Prosthetics for the Bureau of Motor Carrier Safety." This booklet developed the Amputee Driver Functional Matrix Chart (ADFCM). The ADFMC identified critical driving tasks associated with specific types of amputation or limb-impairment and graded their difficulty, given the specific handicap type. The chart was predicated on the convictions of physiatrists (physicians specialized in physical and rehabilitative medicine) and occupational therapists that a driver with an upper limb amputation or limb-impairment must wear a properly fitted and appropriate prosthesis or orthotic device to properly and safely operate a commercial motor vehicle. Limb-impaired applicants may not require an orthotic device if they can demonstrate precision prehension and power grasp prehension without one.

Comments

Six comments were received to this proposal. Three commenters supported the proposal. One of the three agreed that the proposal should apply to all tractor-trailer drivers but thought it was unnecessary for lightweight truck drivers since most of them have automatic transmissions. Three of the six were against the proposal. Two of these currently hold waivers in the Waiver Program and the third has a Waiver Program driver working at his motor carrier company.

Comments in Favor of the Proposal

The State of Georgia's Division of Rehabilitation Services concurred with the proposal to require a demonstration of precision prehension and power grasp prehension by those individuals with prostheses. However, it did not comment on whether every upper limb amputee should be required to wear a prosthesis.

Comments from the Michigan Committee on Handicapped Concerns agreed with the proposal as it relates to heavy duty truck drivers and drivers of articulated motor vehicles in particular. However, the Committee took exception to the proposal's application to trucks having a gross vehicle weight rating (GVWR) of 10,000 pounds or less should be considered for exemption if they have automatic transmissions. Further, the Committee points out that some amputees have legitimate reasons for not wearing prostheses (i.e., difficulty in fit, excessive sweating in hot weather,

swelling, pain and skin deterioration problems).

Comments of the American Trucking Associations, Inc., (ATA) fully supported the proposal. It believed the ability to operate switches and other controls and to maintain a firm grip on the steering wheel are essential to safe driving. The ATA requested a brief explanation in the rule of what is encompassed in the function of precision prehension and power grasp prehension.

Comments on Opposition to the Proposal

Two drivers currently in the Waiver Program who believe the proposal may affect them commented on it. One pointed out that his performance on the Skill Performance Evaluation (SPE) (an in-vehicle demonstration of ability evaluation) and his special medical evaluation speaks for itself. Further, he added he has an 8-year accident-free record driving tractor-semitrailer combinations.

A motor carrier employee commented that his carrier has a Waiver Program driver who may be affected by the proposal. The commenter stated the driver has driven 2.5 million miles over 28 years without a chargeable accident.

Discussion

Comments in opposition to the proposal requiring all Waiver Program applicants to be capable of demonstrating precision prehension and power grasp prehension were not persuasive. One commenter spoke of the inconvenience involved in adjusting to a prosthesis as well as noting the potential cost and time involved in purchasing and training with it. Another stated that he believed the Waiver Program's special medical evaluation and the SPE, both of which he passed, were sufficient to determine he was a safe driver. The third commenter, a motor carrier employee, cited the safety record of a driver who drove for the motor carrier and who had a waiver. All three commenters in opposition are, or write of, current Waiver Program participants. No comments were received from prospective Waiver Program applicants. No group data was submitted. All statements in opposition to the proposal related to single individuals or incidents.

In contrast, the work of the Krusen Center for Research and Engineering of the Moss Rehabilitation Hospital included data on group statistics when it developed its functional matrix charts. These charts are predicated on a limb-handicapped individual wearing either a prosthesis or, if warranted, an orthotic

device. In addition, the SPE is a demonstration of ability test which assesses an applicant's progress in overcoming a disability. The SPE evaluates normal driving tasks. It does not evaluate an applicant in terms of timeliness and correctness of response to emergency driving situations. It is our contention that the absence of prehensive ability in each upper limb separately is a significant safety risk in most emergency situations.

The experts at the Krusen Center for Research and Engineering considered the prosthetic and orthotic device costs and training, and the fact that in infrequent instances skin deterioration problems occur. They still recommended a policy of mandating prosthetic devices for amputees and, for limb-impaired individuals, orthotic devices if they are warranted.

The comment from the Michigan Commission on Handicapped Concerns that lightweight trucks, those having a GVWR of 10,000 pounds or less, should be exempted from the proposed requirement because lightweight vehicle characteristics are more similar to those of a passenger car than a heavy truck is not supported by fact. A report by the National Highway Traffic Safety Administration (NHTSA) entitled, "The National Accident Sampling System, 1981" stated that in single vehicle accidents, "rollovers were almost four times more common for accident-involved light trucks and vans than for accident-involved passenger cars." The report further concluded that, "These differences reflect vehicle design and use." The report (NHTSA document number HS 808-438) is available for review in the docket file. However, since Part 391 contains a lightweight vehicle exemption (49 CFR 391.82), this is a moot point. Also, under the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, Oct. 30, 1984), the Waiver Program is only applicable to drivers of commercial motor vehicles. Under this Act, a "commercial motor vehicle" means any self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property—

(A) If such vehicle has a gross vehicle weight rating of 10,001 or more pounds;

(B) If such vehicle is designed to transport more than 15 passengers, including the driver; or

(C) If such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1812) and are transported in a quantity requiring placarding under

regulations issued by the Secretary under such Act.

Of the three commenters in opposition to this proposal, two are currently in the Waiver Program and the third writes in support of a driver with a waiver. About 5 percent (fifteen individuals) of the current population of drivers with waivers could be affected by this proposal. The majority of these drivers' accident records have been reviewed. These drivers' records compare favorably with other current Waiver Program drivers' accident records which in turn compare favorably with nonhandicapped commercial drivers' accident records. This 5-percent group was several fold larger prior to a rulemaking in 1979. After the 1979 rulemaking, the FHWA's Bureau of Motor Carrier Safety (BMCS) instituted its present policy which requires the use of a prosthesis for all upper limb amputees. In the case of an upper limb impairment, an orthotic device is required, if warranted. Apparently, numerous Waiver Program drivers affected by the 1979 policy departed from the Program either voluntarily or through program actions of the BMCS. The 5-percent group that remains in the Waiver Program has an acceptable accident safety record.

Conclusion

Because the highways cannot be the testing grounds for evaluation of one-handed drivers, the FHWA has determined that Waiver Program applicants must be capable of demonstrating precision prehension and power prehension in each upper limb separately. Thus, upper limb amputee applicants will be required to be properly fitted with a functional prosthesis and be proficient in its use prior to Waiver Program application. Those applicants with upper limb impairments will be required to be fitted with a functional orthotic device and be proficient in its use, if a device is warranted, prior to their application for a waiver. It should be noted that under § 391.41(b)(1) an upper limb amputation is defined as an amputation when the amputation is at the wrist or above. That is, if one or several fingers have been amputated or are otherwise missing or impaired, then the medical condition is categorized as an upper limb impairment and is medically evaluated under § 391.41(b)(2). This is an important distinction because an amputation under § 391.41(b)(1) is always medically disqualifying, whereas a condition classified as an impairment is subject to the doctor's medical judgment of whether the condition

interferes with the normal driving tasks of a commercial driver.

Thus, given the technical expertise and the rehabilitation experiences of the personnel of the Krusen Center for Research and Engineering and the inability of the SPE to test and measure emergency response reaction times, prudent action dictates that FHWA require Waiver Program applicants to be capable of demonstrating precision prehension and power grasp prehension in each upper extremity separately. This requirement will apply to drivers of commercial motor vehicles as defined under the Motor Carrier Safety Act of 1984.

Comments from current Waiver Program drivers who may be affected by this proposal state that they have long histories of accident-free driving. The FHWA's evaluation of the accident records of current Waiver Program drivers who could be affected by this proposal reveal that as a group they have good safety records. Their accident experience is comparable to the accident experience of all Waiver Program drivers. An evaluation of all Waiver Program drivers showed as a group they had a lower accident frequency per million miles than nonhandicapped drivers. Therefore, those drivers currently in the Waiver Program who could be affected by this requirement will be grandfathered. A driver who is grandfathered will have this fact stated on the waiver form. The statement will appear in the space on the waiver form provided for the description of the prosthetic or orthotic device. It will state, "grandfathered, no prosthesis required" or "grandfathered, no orthotic device required" whichever is appropriate.

The FHWA intends to stipulate on the waiver form that those drivers who are evaluated with a prosthesis or orthotic device must wear the device when driving in interstate or foreign commerce.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies of the Department of Transportation. Since this revision only clarifies a current application, no economic impact will result. Accordingly, a regulatory evaluation has not been prepared. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 391

Highways and roads, Highway safety, Motor carrier—driver qualifications, Motor carrier—handicapped driver waivers, Motor carrier safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: December 2, 1985.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

In consideration of the foregoing, the FHWA is amending Title 49, Code of Federal Regulations, Part 391, as follows:

1. The authority citation for Part 391 reads as follows:

Authority: 49 U.S.C. 104 and 3102, 49 CFR 1.48.

2. Part 391, Subpart D is amended by revising § 391.49(d)(3) (i) and (ii) to read as follows:

§ 391.49 Waiver of certain physical defects.

• • •
(d) • • •
(3) • • •

(i) The medical evaluation summary for a driver applicant disqualified under § 391.41(b)(1) shall include:

(A) An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a motor vehicle, and

(B) A statement by the examiner that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately. This requirement does not apply to an individual who was granted a waiver, absent a prosthetic device, prior to the publication of this amendment.

(ii) The medical evaluation summary for a driver applicant disqualified under § 391.41(b)(2) shall include:

(A) An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;

(B) An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and

(C) A statement by the examiner that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately. This requirement does not apply to an

individual who was granted a waiver, absent an orthotic device, prior to the publication of this amendment.

[FR Doc. 85-28889 Filed 12-4-85; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 40146-4171]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces the reapportionment of 5,000 metric tons (mt) of Pacific cod from domestic annual processing (DAP) to total allowable level of foreign fishing (TALFF). This action responds to the finding that this amount of Pacific cod will not be harvested by U.S. fishermen and thus can be made available to foreign fishermen. This reapportionment is intended as a conservation and management measure that promotes fuller utilization of Bering Sea groundfish.

DATES: This notice is effective from December 2, 1985, until midnight, Alaska Standard Time, December 31, 1985. Comments will be received until December 17, 1985.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. The aggregate data upon which this adjustment is based will be available for public inspection during business hours at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: Total allowable catches (TACs) for various groundfish species are established under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by rules appearing at 50 CFR 611.93 and Part 675. TACs are apportioned initially

among domestic annual harvest (DAH), a nonspecific reserve, and TALFF. DAH amounts are further apportioned between DAP and joint venture processing (JVP). Under §§ 611.93(b)(2) and 675.20(b)(1)(ii), the Director, Alaska Region, NMFS (Regional Director) will, as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines appropriate, reassess and reapportion to TALFF amounts of DAP and JVP that he determines will not be harvested by U.S. vessels during the remainder of the fishing year.

This action supplements TALFF by reapportioning 5,000 mt of Pacific cod from DAP. The current DAP catch of Pacific cod is 59,000 mt, or 59 percent of the 100,000-mt amount set aside for DAP (50 FR 35825, September 8, 1985). After reapportioning 5,000 mt to TALFF, roughly 36,000 mt will still be available for U.S. fishermen. Certain foreign fishing interests have shown a willingness to purchase additional U.S.-processed products if they are allowed to harvest an additional amount of Pacific cod. The Regional Director intends to promote this arrangement by making the Pacific cod available. Numerical allocations of Pacific cod following this reapportionment are shown in the following table:

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[In metric tons (mt)]

	Current	This action	Revised
Pacific cod TAC—220,000:			
DAP	100,000	-5,000	95,000
JVP	63,190		63,190
TALFF	54,120	+5,000	59,120
Total allocated groundfish species (includes other species not affected by this action) ¹			
TAC—2,000,000:			
DAP	142,210	-5,000	137,210
JVP	897,850		897,850
Reserve	1,345		1,345
TALFF	1,150,595	+5,000	1,163,595

¹ See also 50 FR 40977, Oct. 8, 1985, and 50 FR 43716, Oct. 26, 1985.

In view of the fact that few weeks remain in the 1985 fishing year and that foreign fishermen must have time to harvest the additional Pacific cod during the remainder of the year, the Agency has determined that providing a prior opportunity for public comments and delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest. Comments will be received for a period of 15 days after the effective date of this notice and will be considered and responses to those comments will be published in the *Federal Register* if this notice is modified, superseded, or rescinded.

Classification

This action is taken under Authority of 50 CFR 611.93(b) and Part 675 and complies with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations Reporting and recordkeeping requirements.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: November 29, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-28898 Filed 12-2-85; 12:38 pm]

BILLING CODE 3510-22-M

50 CFR Part 652

[Docket No. 41270-5026]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of size limit adjustment; extension of public comment period.

SUMMARY: NOAA issued a notice of size limit adjustment effective November 8, 1985 (50 FR 46671, November 12, 1985) to reduce the minimum size limit for surf clams to 5 inches. NOAA extends the public comment period through December 1985, because the initial response to the notice indicates that a longer public comment period would be in the best interest of the public. A number of constituents suggested they needed more time to discuss the issue among themselves prior to responding to the size limit adjustment.

DATES: The public comment period is extended from November 27, 1985 to December 31, 1985.

ADDRESS: Send comments to Monique Rutledge, Northeast Region, National Marine Fisheries Service, State Fish Pier, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Surf Clam Size Limit." Copies of the statistical information supporting this rule may be obtained from Ms. Rutledge at the same address.

FOR FURTHER INFORMATION CONTACT: Monique Rutledge, 617-281-3600, extension 272.

Dated: November 27, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-28914 Filed 12-2-85; 4:25 pm]

BILLING CODE 3510-22-M

50 CFR Part 671

[Docket No. 41154-4154]

Tanner Crab Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fishery in the Southern District of Registration Area H must be closed in order to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crab by vessels of the United States in the Southern District. This action is intended as a management measure to conserve Tanner crab stocks.

DATE: This notice is effective 12:00 noon, Alaska Standard Time (AST), December 2, 1985. Public comments on this notice of closure are invited until December 17, 1985.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (NMFS Fishery Management Biologist), 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone (FCZ) under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of season and area

openings and closures. Implementing rules at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(e) establishes six districts within Registration Area H (Cook Inlet area) in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. One of these districts is the Southern District.

The Tanner crab season in Cook Inlet opened on November 1, 1985 (50 FR 47549; November 19, 1985). The overall optimum yield (OY) for Registration Area H is 1.5 to 3 million pounds.

Approximately 89 vessels caught an estimated 1.2 million pounds of crab from the Southern District through November 19. The catch of legal-sized crabs per pot (CPUE) declined from approximately 32 crabs per pot to 3 crabs per pot in the waters east of Homer Spit, and declined from 59 crabs per pot to 26 crabs per pot in the waters west of Homer Spit. This unanticipated rapid decline in CPUE, an average catch of over 50 sublegal and female Tanner crab per pot, and the catch of substantial numbers of king crab necessitates the closure of this fishery to protect Tanner and king crab stocks.

In light of this information, the Regional Director, in accordance with § 671.27(b), has determined that:

1. Actual conditions of Tanner crab stocks in the Southern District of Cook Inlet are substantially different from conditions anticipated at the beginning of the fishing year; and

2. These differences reasonably support the need to protect those Tanner crab stocks by closing the Southern District of Cook Inlet as defined in § 671.26(e)(1)(ii), from 12:00 noon, AST, December 2, 1985, until 12:00 noon, Alaska Daylight Time, April 30, 1986, at which time the closure of this district prescribed in Table 1 of § 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the

Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the *Federal Register*, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Southern District will be subject to damage by overfishing unless the closure takes effect promptly. The Agency, therefore, finds for good cause that advance opportunity for public comment on this order is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of 50 CFR Part 671 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 2, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-28915 Filed 12-2-85; 4:26 pm]

BILLING CODE 3510-22-M

50 CFR Part 671

[Docket No. 50950-5182]

Tanner Crab Off Alaska

Correction

In FR Doc. 85-27571, beginning on page 47549, in the issue of Tuesday, November 19, 1985, make the following corrections:

1. On page 47549, second column, in the DATES column of the table:
 - a. The entry for H (Cook Inlet) should have read "Nov. 1 to Apr. 30.";
 - b. The entry for J (Westward), Semidi Island Section, should have read "Jan. 15 to May 15."
2. On page 47550, third column, the eighth line of amendatory instruction 4 should have read: "paragraph (e)(1)(i) through (e)(1)(iv) are".

BILLING CODE 1505-01-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 440

[Docket No. 2719S]

Texas Citrus Tree Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Add as a cause of loss the unavoidable failure of irrigation water supply after insurance attaches; (2) change the method of calculating the insured's share of an indemnity at loss adjustment time; (3) add a provision to not insure that acreage where grafting on existing root stock was performed within one year prior to the date insurance attaches; (4) add a provision to provide a coverage level if the insured does not select one; (5) lengthen to 20 days the delay before insurance against hurricane and freeze attaches after application is signed; (6) add a provision to provide that damage to a grove of over 80 percent will be considered as 100 percent damaged; (7) add definitions for "ASCS", "Cyclone", "Freeze", and "Frost"; and (8) redefine "County" to clarify when land located outside the county is included in the county.

DATES: Comment Date: Written comments, data, and opinions on this proposed rule must be submitted not later than January 6, 1986, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that the action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the Texas citrus tree policy are:

1. Section 1—Add the failure of irrigation water supply because of unavoidable cause as an insurable

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cause of loss. This clarifies intent since it is implied in Section 2.

2. Section 2—Add a clause to change the method of calculating the insured's share of an indemnity on crops at loss adjustment time. This limits the insured's indemnity to the insured's interest in the crop at the time of loss.

Add a provision to exclude acreage from insurance when the citrus on which grafting on existing root stock has been performed within one year prior to the date insurance attaches.

3. Section 4—Add a provision for a coverage level if the insured does not select one.

4. Section 7—Lengthen from the 10th day to the 20th day the date insurance against hurricane and freeze attaches after application is signed. This change allows a sufficient time lapse, that losses from these causes cannot be foreseen.

5. Section 9—Add a provision to provide that any grove with over 80 percent damage will be counted as 100 percent damaged. This change is made because when over 80 percent of the grove is damaged, it is not worth caring for and has to be replaced.

6. Section 17—Add definitions for the terms "ASCS", "Cyclone", "Freeze", and "Frost".

Amend the "County" definition to clarify when land located outside the county is deemed to be in the county.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 440

Crop insurance, Texas Citrus Tree.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Texas Citrus Tree Insurance Regulations (7 CFR Part 440), effective for the 1987 and succeeding crop years, to read as follows:

PART 440—TEXAS CITRUS TREE INSURANCE REGULATIONS**Subpart—Regulations for the 1987 and Succeeding Crop Years**

Sec.

440.1 Availability of Texas citrus tree insurance.

440.2 Premium rates, coverage levels, amounts of insurance, and prices at which indemnities shall be computed.

440.3 OMB control numbers.

440.4 Creditors.

440.5 Good faith reliance on misrepresentation.

440.6 The contract.

440.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1987 and Succeeding Crop Years**§ 440.1 Availability of Texas citrus tree insurance.**

Insurance shall be offered under the provisions of this subpart of citrus trees in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation for those approved by the Board of Directors of the Corporation.

§ 440.2 Premium rates, coverage levels, amounts of insurance, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, coverage levels, amounts of insurance, and prices at which indemnities shall be computed for citrus trees which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level, amount of insurance, and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 440.3 OMB control numbers.

The OMB control numbers are contained in Subpart H of Part 440, Title 7 CFR.

§ 440.4 Creditors

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 440.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Texas Citrus Tree insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 440.6 The contract

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the citrus trees as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 440.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the citrus trees as landlord or owner-operator. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of

the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the *Federal Register*, upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a citrus tree contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Texas Citrus Tree Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE**Federal Crop Insurance Corporation*****Texas Citrus Tree—Crop Insurance Policy***

(This is a continuous contract. Refer to Section 15.)

Agreement to Insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions**1. Causes of loss.**

a. The insurance provided is against unavoidable damage to citrus trees resulting from the following causes occurring within the insurance period:

- (1) Freeze;
- (2) Frost;
- (3) Excess moisture;
- (4) Hail;
- (5) Fire;
- (6) Cyclone;
- (7) Tornado;

(8) Failure of the irrigation water supply due to unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9g.

b. We will not insure against any cause of loss or damage to the citrus trees due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree prunings have not been removed from the grove;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good grove management practices;

(4) The failure or breakdown of irrigation equipment or facilities;

(5) The failure to follow recognized good citrus tree irrigation practices; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be any of the following insurable citrus tree types (hereafter called trees) you elect:

Type I. Early and midseason orange trees;

Type II. Late orange (including Temples) trees;

Type III. Grapefruit trees except Star Ruby trees;

Type IV. Star Ruby grapefruit trees; which are set out for the purpose of harvesting citrus as fresh fruit and/or juice, which are located on insured acreage, and for which an amount of insurance and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be trees located on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord or owner-operator in the insured citrus tree at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the time of loss.

d. We do not insure any acreage:

(1) For the crop year the application for insurance is filed unless the acreage has been inspected and considered acceptable to us;

(2) On which grafting on existing root stock has been performed within 1 year prior to the date insurance attaches;

(3) Where the grove management practices carried out are not in accordance with those practices for which premium rates have been established;

(4) Maintained or set out for experimental purposes;

(5) In any established grove which does not have the potential to produce at least 70 percent of the area average yield for the type and age, unless we agree in writing to insure that acreage; or

(6) Which is not irrigated.

e. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

f. We may:

(1) Exclude from insurance; or

(2) Limit the amount of insurance on; any acreage which was not insured by us the previous crop year.

3. Report of acreage, share, number, type, age of trees, and where applicable, practice.

You must report on our form:

a. All the acreage of trees in the country in which you have a share;

b. The practice;

c. Your share at the time insurance attaches; and

d. the type, number of trees, and:

(1) Date of original set out; or

(2) Date of replacement and/or dehorning, if more than 10 percent of the trees on any unit have been replaced or dehorned in the previous 5 years; and

e. Within 72 hours of the completion of set out; the acreage, type, number of trees, and the date set out is completed for any insurable acreage of trees set out after June 1 of the crop year, if you elect to insure such acreage during that crop year.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any trees located in the county. This report must be submitted annually on or before June 30. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by June 30, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Coverage levels and amounts of insurance.

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and amount of insurance on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

d. The amount of insurance will be reduced for any acreage which has not reached the fourth growing season after being set out or fifth year following dehorning. The amount of insurance will be the product obtained by multiplying the amount of insurance selected from the actuarial table by:

(1) 25 percent the year of set out or the year following dehorning;

(2) 40 percent the first growing season after being set out or the second year following dehorning;

(3) 60 percent the second growing season after being set out or the third year following dehorning; or

(4) 75 percent the third growing season after being set out or the fourth year following dehorning.

e. The amount of insurance will be reduced proportionately for any unit on which the stand is less than 90 percent, based on the original planting pattern.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time insurance attaches.

b. Interest will accrue at the rate of one and one-half percent ($1\frac{1}{2}\%$) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from an indemnity payable to you or from any loan or payment due you under

any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches on insured acreage on June 1 for each crop year except that for the first crop year and notwithstanding section 2d(1):

(1) If the application is accepted by us after June 1, the insurance against hurricane and freeze will attach the twentieth day after the application is signed by you; and

(2) If any insurable acreage is set out after June 1, insurance will attach on the date set out is completed for the unit if the acreage is reported within 72 hours after the date of completion except insurance against hurricane and freeze will attach the twentieth day after you report such acreage.

b. The insurance period ends at the earlier of:

(1) May 31 following the beginning of the crop year; or

(2) total destruction of the insured trees.

8. Notice of damage or loss.

a. In case of damage or probable loss, you must give us written notice of:

(1) The dates of damage; and

(2) The causes of damage.

b. If you are going to claim an indemnity on any unit, we will have the right to inspect all insured acreage and damaged trees before pruning, dehorning, or removal.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the trees on the unit; or

(2) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Furnish records concerning all trees on the unit;

(2) Show that any damage to the trees has been directly caused by one or more of the insured causes during the insurance period; and

(3) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount(s) of insurance;

(2) Multiplying this result by the applicable percent of loss determined by subtracting from the actual percent of damage determined in accordance with section 9e. the following applicable amount:

(i) 25 percent (for Coverage Level 3) and dividing the result by 75 percent;

(ii) 35 percent (for Coverage Level 2) and dividing the result by 65 percent; or

(iii) 50 percent (for Coverage Level 1) and dividing the result by 50 percent; and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

e. The total amount of indemnity will include both trees damaged and trees destroyed due to an insurable cause.

(1) The actual percent of damage to count will be:

(a) The percent of damage determined by dividing the number of scaffold limbs (scaffold limbs are limbs directly attached to the trunk) damaged in an area from the trunk to a length equal to one-fourth ($\frac{1}{4}$) the height of the tree, by the total number of scaffold limbs before damage occurred. Any trees with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out;

(b) Any grove with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out; or

(c) The percent of damage resulting from insurable causes occurring during the crop year of set out as follows:

(i) 100 percent if the trees are killed back to the root stock; or

(ii) 90 percent if the trees have less than 12 inches of live wood above the bud union. However, no damage will be considered if more than 12 inches of wood above the bud union is alive.

(2) Any percentage of damage by uninsured causes, will not be included in the actual percent of damage.

f. The amount of indemnity will be determined at the earlier of:

(1) Total destruction of the trees; or

(2) The calendar date for the end of the insurance period.

g. If you elect to exclude hail and fire as insured causes of loss and the citrus trees are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78-A, "Request to Exclude Hail and Fire."

h. You must not abandon any acreage to us.

i. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity

other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the trees on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such violation will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to grove.

You must keep for two years after the time of loss, records of the trees destroyed and damaged on each unit, including separate records showing the same information for any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, or a determination that no indemnity is due. Any person designated by us will have access to such records and the grove for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract will continue in force

for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract and insurance on any type of citrus trees may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are May 31 prior to the date insurance attaches.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by February 28 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of Texas citrus tree crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding citrus tree insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

d. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county as shown by the actuarial table; and

(3) Any land identified by an ASCS farm serial number for the county but physically located in another county.

e. "Crop year" means the period beginning June 1 and extending through May 31 of the following year and will be designated by the calendar year in which the insurance period ends.

f. "Cyclone" means only a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion which has been named by the United States Weather Service and which has sustained winds in excess of 58 miles per hour at the nearest U.S. Weather Service reporting station to the crop damage at the time of the crop damage.

g. "Dehorning" means the cutting back of each scaffold limb to a length that is no longer than $\frac{1}{4}$ the height of the tree.

h. "Destroyed" means trees which are damaged to the extent that removal is required.

i. "Freeze" means the condition that exists when air temperatures over a widespread area remain at or below 32 degrees Fahrenheit.

j. "Frost" means the condition that exists when the air temperature around the plant falls to 32 degrees Fahrenheit or below.

k. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

l. "Insured" means the person who is an owner of the trees insured and who submitted the application accepted by us.

m. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

n. "Service office" means the office servicing your contract as shown on the application for insurance or such other approve office as may be selected by you or designated by us.

o. "Set out" means transplanting the citrus tree from the nursery to the grove.

p. "Total destruction" means the occurrence of damage by unit to the trees which have been set out more than one year in excess of 80 percent.

q. "Unit" means all insurable acreage in the country of any one of the tree types referred to in section 2 of this policy, located on contiguous land on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share, or

(2) In which you are a joint-owner.

Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on October 31, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-28921 Filed 12-4-85; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-115-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes and Lockheed-California Company Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the left rear fan cowl door support stowage mechanism on all Lockheed Model L-1011 series airplanes and Boeing Model 747 series airplanes powered by Rolls-Royce RB211-524 engines. This proposed AD is prompted by nine reports of engine throttle control mechanism jamming caused by an unrestrained left rear fan cowl door support that fell among the throttle mechanism linkage. The throttle control jamming could result in loss of engine control.

DATE: Comments must be received on or before January 27, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention:

Airworthiness Rules Docket No. 85-NM-115-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The service bulletin specified in this notice may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; the Lockheed-California Company, P.O. Box 551, Burbank, California 91520.

Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1; or the Service Modification Engineer, RB211 Propulsion System, Rolls-Royce Limited, P.O. Box 31, Derby, England. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington; or at the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Kanji K. Patel (for Model 747 airplanes), Propulsion Branch, ANM-1040S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2973; or Mr. Stephen Kolb (for Model L-1011 airplanes), Supervisory Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2835.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted to duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-115-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Nine incidents have been reported of the engine throttle control jamming on Lockheed Model L-1011 series airplanes and Boeing Model 747 series airplanes powered by Rolls-Royce RB211-524 engines, due to interference from an unstowed left rear fan cowl door support. On both types of airplanes, the support is a telescopic strut, which is attached at one end to the fan cowl door through a swivel joint; and, in a stowed position, it is secured at the other end in a housing by a pin-type mechanism. It is possible to close the fan cowl door with the strut in the unstowed position on multiple engines on the same airplane. The strut, if not stowed and secured properly, may fall on the engine throttle control cables and jam the cables, thereby restricting the crew's ability to manipulate the throttle.

To prevent incidents of jamming of the throttle controls, Rolls-Royce issued Service Bulletin (S/B) SB RB211-71-7254, Revision 1, on December 7, 1984, recommending modification to improve the stowage mechanism design. The improved design incorporates a baulking bracket for the strut, which restrains the strut from falling on the throttle control cables in the event the strut was not stowed properly and the fan cowl door was closed.

Since this condition is likely to exist or develop on other airplanes of the same type designs, the FAA is proposing an airworthiness directive (AD) which would require modifications in accordance with Rolls-Royce Service Bulletin RB211-71-7254, Revision 1, dated December 7, 1984, on all Lockheed L-1011 series airplanes and all Boeing Model 747 series airplanes equipped with RB211-524 engines.

Approximately 113 U.S. registered Model L-1011 series airplanes would be affected by this AD. No U.S. registered Boeing Model 747 series airplanes powered by RB211-524 engines would be affected. It is estimated that it would take four manhours at \$40 per manhour and \$120 for parts for each engine modified. Based on these figures, the cost to modify the Model L-1011 airplanes is estimated to be \$840 per airplane, or \$94,920 for the airplanes on the U.S. register. The cost to modify a Model 747, should one be imported, in the future, would be \$1,120 per airplane.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 or Lockheed Model L-1011 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing and Lockheed-California Company:

Applies to all Boeing Model 747 Series airplanes equipped with Rolls-Royce RB211-524 engines and all Lockheed Model L-1011 Series airplanes, certificated in any category. To prevent loss of throttle control caused by an unstowed left rear fan cowl door support, accomplish the following within 12 months after the effective date of this AD, unless already accomplished:

A. Modify the fan cowl support strut stowage mechanism in accordance with Rolls-Royce Service Bulletin RB211-71-7254, Revision 1, dated December 7, 1984.

B. Alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, for Boeing Model 747 airplanes; or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, for Lockheed Model L-1011 airplanes.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received these documents

from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; the Lockheed-California Company, P.O. Box 551, Burbank, California 91520; or from Service Modification Engineer, RB211 Propulsion Systems, Rolls-Royce Limited, P.O. Box 31, Derby, England. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington; or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on November 27, 1985.

Wayne J. Barlow,

*Acting Director, Northwest Mountain Region.
[FR Doc. 85-28873 Filed 12-4-85; 8:45 am]*

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Amendments to Minimum Financial and Related Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening of the comment period.

SUMMARY: On August 5, 1985, the Commodity Futures Trading Commission ("Commission") published proposed amendments to the minimum financial and related requirements for futures commission merchants ("FCMs") and introducing brokers ("IBs") (50 FR 31612), and allowed sixty days for public comment thereon, until October 4, 1985. By letters dated August 28 and 29, 1985, two exchanges requested a sixty-day extension of the comment period. The Commission subsequently extended the comment period for thirty days, to November 4, 1985. 50 FR 39133 (September 27, 1985). By letters dated September 26 and October 10, 1985, an exchange requested a further extension of the comment period, noting that in conjunction with other exchanges, it was in the process of analyzing data essential to responding to the issues raised in the Commission's proposals. The Commission subsequently extended the comment period for an additional four months, until March 5, 1986, with respect only to the proposal to require FCMs to calculate a concentration charge in computing their adjusted net capital. The Commission stated that it believed that sufficient time had been

provided for interested parties to respond to the other proposals that were published on August 5, 50 FR 45831 (November 4, 1985).

The Commission has reviewed approximately seventy-five comments already received on its financial rule proposals. Based upon that review, and before proceeding further, the Commission has determined to reopen the comment period on the other August 5 financial rule proposals until March 5, 1986 in order to permit commenters to address among other things certain other commenters' suggested alternatives. The Commission wishes to note, however, that its reopening of the comment period does not foreclose the Commission either from electing to treat each of the various financial rule proposals separately, as it has previously indicated, or from determining based upon comments submitted that two or more of the items may be considered together.

DATES: Notice is hereby given that all comments on the proposed amendments to the minimum financial and related requirements for FCMs and IBs published on August 5, 1985 must be submitted by March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Gary C. Miller, Assistant Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Debit/Deficit Accounts

The Commission proposed to require that an FCM exclude from its current assets any account which is in a debit or deficit status as of the close of business on the day the account reaches that status, without allowing a one-day grace period as at present. The Commission proposal was in response not only to the demise of Volume Investors Corporation but also because the Commission recently became aware that some FCMs have not taken the proper capital charge when customers continue to trade while their accounts are in a deficit status.

Several commenters stated that the elimination of the one-day grace period would present practical problems because most FCM accounting systems do not provide reports on account status until the morning of the following business day, making it difficult to determine whether an account was in a debit or deficit status at the close of a particular day until the next morning. It was further stated that the Federal Reserve wire transfer system closes

before all of the commodity markets close, making the transfer of funds by wire before the following morning impossible. These commenters said it would be unfair to require an immediate capital charge regardless of the creditworthiness of the customer in view of these administrative difficulties. In light of those comments and the Commission's reconsideration of this issue, the Commission believes that an alternative to its proposal suggested by some commenters may have merit. The suggested alternative amendment to Rule 1.17(c)(2)(i) would read as follows:

Exclude any unsecured commodity futures or option account containing a ledger balance and open trades, the combination of which liquidates to a deficit or containing a debit ledger balance only and which did not satisfy an undermargined condition which existed the previous business day. (new language in *italics*)

Under this alternative, if an account went into a debit/deficit condition on a particular day, the one-day grace period would still apply, but if the account had been undermargined the previous day and that condition had not been alleviated, an immediate exclusion would be required. The Commission requests that commenters specifically address this suggested alternative treatment of debit/deficit accounts during the additional comment period. In this connection, commenters should also address how this calculation relates to the current calculation of a capital charge for accounts in an undermargined status.

II. Net Capital Treatment of Securities and Receivables

The Commission proposed to establish good control locations where securities can be held in order for them to be treated as current assets of an FCM or IB. These control locations were: (1) The FCM or IB itself; (2) a primary government securities dealer; (3) certain banks; or (4) a commodities or securities clearing organization. Another FCM or IB would not be a good control location. Securities subject to a repurchase agreement or a reverse-repurchase agreement would also have to be held in one of the specified control locations, provided that an FCM or IB could not enter into a repurchase agreement with another FCM or IB, and provided further that a counterparty to a reverse-repurchase agreement with an FCM or IB could not maintain possession of the collateral. Additional conditions relating to counterparty confirmation, safekeeping receipts to be issued by a custodian other than the FCM or IB, and restrictions on the custodian's ability to encumber or

dispose of securities were also proposed.

Several commenters noted that issues related to the treatment of repurchase agreements and reverse-repurchase agreements, a principal but not the sole focus of the Commission's proposal relating to the net capital treatment of securities and receivables, and currently under review by the Securities and Exchange Commission ("SEC"), certain other agreement agencies, and in Congress. Many commenters stressed the need for consistent treatment in this area. The Commission is, of course, aware of the activities of other agencies in this area, and Commission staff and SEC staff have held discussions on these issues prior to and since the publication of the Commission's proposals on August 5, 1985. The Commission consults and coordinates with the SEC regarding various aspects of the financial rules so that, to the extent practicable, FCMs and broker-dealers and, in particular, dually-registered firms, are not subject to inconsistent requirements. Moreover, the structure of the capital rule generally assumes the consistent treatment of securities by the SEC and the CFTC. Therefore, the Commission has determined to defer temporarily any action with respect to its August 5 proposals regarding the net capital treatment of securities and receivables pending further consultation and coordination with the SEC. In this connection, the Commission has been advised that the SEC expects to publish its own proposals with respect to repurchase and reverse-repurchase agreements prior to March 5, 1986. Any interested party wishing to provide comments to the Commission on these matters should feel free to do so and the Commission will share all comments to date and any further comments with the SEC and other appropriate agencies during its consultative process.

The Commission also proposed in its August 5 release that for any loan, advance or other form of receivable to be considered secured, the FCM or IB would be required to have possession or control of the collateral (again, the counterparty could not have possession). If the proposal were adopted, a perfected security interest in collateral would no longer constitute security for a receivable. The Commission hereby requests comment on its view that the possession or control of warehouse receipts would satisfy the requirement to "possess or control" the collateral and also, if not eliminated, whether different treatment should be accorded security interests of

different degrees *i.e.*, first security is different from subordinate interest.

III. Guaranteed Accounts

The Commission proposed that an FCM could not consider an account to be guaranteed unless a written guarantee agreement governing such an account is filed with the FCM, together with an opinion of counsel stating that the guarantee agreement is sufficient to be a binding guarantee under applicable local law. The rule would also provide that if a guaranteed account becomes undermargined, the existence of a guarantee agreement, standing alone, would not be sufficient to alleviate the guaranteed account's undermargined status. Such an account's undermargined status could only be alleviated by accruals on, or a reduction of, open positions, or by the deposit of additional funds. The rule would also provide that if the FCM had prior written authorization of the guarantor, and there were sufficient excess net equity in the guarantor's account, the FCM could transfer funds from the guarantor's account to the guaranteed account. Unless and until any of those actions were taken, however, the guaranteed account would remain undermargined. There would be similar treatment if a guaranteed account were in debit or deficit status. The proposal was intended to clarify existing interpretations, which extend back to Commodity Exchange Authority Administrative Determination No. 15 (August 10, 1937). Several commenters agreed that a guarantee itself should not be good capital just as a guarantee is not treated as a current liability. This is already the Commission's view. The question is how is this effect achieved.

Certain commenters stated that the transfer of funds to the appropriate account which would be required under the new rule may present various operational problems and perhaps adverse tax consequences. The Commission, however, believes that any adverse consequences would arise from the substance of the transaction, which is a loan of margin from one account to another, and not from the effect of the transfer itself. Alternatives to the proposal which have been suggested include the use of an escrow-type account which could be established by a guarantor for its guaranteed accounts. It has also been suggested that consideration be given to the development of a uniform guarantee agreement legally validated for use in each jurisdiction in which a firm has a branch office as a way to cut costs and eliminate the need for an opinion of counsel for each guarantee. The

Commission believes these suggestions may have merit and specifically requests that commenters address these suggestions in any additional comments and, in particular, consider how such suggestions could be implemented. In this connection, the Commission notes that guarantees have caused problems in several insolvencies.

IV. Other Matters

As noted above, the Commission previously extended the comment period with respect to its proposal to require FCMs to calculate a concentration charge in computing their adjusted net capital. In that notice, several areas of possible modification to the August 5 concentration charge proposal were discussed, and comment was specifically requested thereon. The Commission would appreciate receiving the workpapers which have already been developed by the exchanges and by other commenters who have not provided the basis for any calculations previously submitted, but the Commission does not believe that commenters need to make any further calculations with respect to its original proposal. The Commission wishes to reiterate its request for comment on possible modifications to the original concentration charge proposal, including the suggestion of other alternatives that may be responsive to that request. Alternative calculations should be supported by sample impact data. Due to the complexity of this undertaking, the Commission fully expects that before any final action would be taken on a concentration charge rule or any responsive alternatives submitted, there would be a reproposal and a further opportunity for interested persons to comment. Furthermore, the Commission reserves the right to repropose the other items included in the August 5, 1985, release if the Commission determines such a procedure to be warranted after reviewing all comments it receives on these issues.

The Commission wishes to encourage commenters to suggest possible alternatives not previously discussed by the Commission regarding any of the financial rule proposals and to discuss whether any single proposal or combination might eliminate the need for any other proposal. For example, commenters should also consider whether creating a special class of segregated funds for floor traders and brokers accounts would provide adequate protection for public customer funds in a Volume-type situation absent a capital charge. Commenters might also address whether an alternative to the capital charge on undermargined

accounts which would require that the amount of such a charge instead be added to a firm's required funds in segregation would be helpful. The Commission therefore welcomes written comments from all interested parties who have not yet submitted any written comments, and invites those who have already submitted written comments to supplement their prior submissions in light of the matters raised herein.

Issued in Washington, DC, on December 2, 1985 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-28905 Filed 12-4-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 166 and 167

[CGD 84-021]

Port Access Route Study Results

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: This notice publishes the results of the Port Access Route Study as reopened by announcement in the Federal Register on July 26, 1985 (49 FR 30078). The study area included the area immediately westward of the Santa Barbara Channel off Point Arguello along the coast of central California. Only the results for this study area are published in this document. Study results for adjacent areas have been previously published and are noted in the background section.

In order to provide a right of way for navigation through areas of offshore development and to separate opposing lanes of traffic, the following routing measures are recommended: an extension of the Santa Barbara Channel traffic separation scheme to approximate position 120 degrees, 55 minutes west longitude, and a fairway system continuing west and north from that position to 35 degrees latitude.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Office of Navigation, (G-NSR-3), Room 1408, U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593, telephone number (202) 245-0108, between 8 a.m. and 3:30 p.m., Monday through Friday. Information is also available from Lieutenant Commander Rober Varanko, Eleventh Coast Guard District (mvs), room 709, 400 Oceangate,

Long Beach, CA 90822, telephone (213) 590-2301).

SUPPLEMENTARY INFORMATION:

Background

Port Access routing needs in the area northwest of the Santa Barbara Channel off of California were studied between 1979 and 1982, and results were published on June 24, at 47 FR 27430. One recommendation developed during that study was to extend the Santa Barbara Channel traffic separation scheme (TSS) westward approximately 25 miles to a new precautionary area off of Point Arguello, then northward another 32 miles to 35° latitude where it would join with a shipping safety fairway.

All permanent amendments to an existing TSS on international waters, including a TSS extension, must be approved by the International Maritime Organization (IMO), before they can be implemented. Also, a newly adopted TSS on the United States Outer Continental Shelf cannot be effective until it has completed the rulemaking process as required by the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223).

The proposed extension was first submitted to the IMO Sub-Committee on Safety of Navigation (SUBNAV) at its 28th Session in October 1983 for an initial technical review. SUBNAV determined at that time that the proposed extension of the Santa Barbara Channel TSS did not have sufficient aids to navigation to provide for vessel position fixing within IMO design criteria. The Subcommittee would reconsider the proposal if permanent platforms qualifying as aids to navigation to support the TSS are constructed in the vicinity of the proposed extension.

In areas where a TSS does not meet IMO requirements but where a right of way for navigation is necessary, the PWSA provides an alternative in the form of safety fairways in which fixed structures are not permitted. Establishment of a fairway does not involve IMO approval.

As a result of the SUBNAV determination, the Coast Guard decided the area needed further study. A Port Access Route Study was reopened on July 26, 1984 (49 FR 30078). The scope of the Study was limited in geography to the area of the TSS proposed to IMO and included the issue of the siting of exploratory drilling platforms adjacent to TSS lanes. The Eleventh Coast Guard District conducted the study encompassing the following geographic areas:

Segment (1) is off the coast between Point Sal and Point Arguello, and is bounded by a line connecting the following geographical positions:

Latitude	Longitude
35°00'00" N.	121°17'48" W.
34°30'45" N.	121°00'20" W.
34°29'00" N.	121°07'00" W.
35°00'00" N.	121°25'00" W.

Segment (2) is a circular area off the coast of Point Arguello. The circle has a radius of four miles centered upon geographical position 34°27'18" N latitude, 121°02'30" W longitude.

Segment (3) is off the coast between Point Arguello and Point Conception and is bounded by a line connecting the following geographical positions:

Latitude	Longitude
34°29'09" N.	120°58'12" W.
34°22'20" N.	120°29'42" W.
34°17'30" N.	120°31'12" W.
34°24'33" N.	120°59'00" W.

The Port Access study for these areas was performed in accordance with the Ports and Waterways Safety Act (33 U.S.C. 1223(c)(3) and 1224). During the study the Coast Guard consulted with federal and state agencies and considered the views of representatives of the maritime community, port and harbor authorities and associations, environmental groups and other parties who may be affected by the study results.

During the study the Coast Guard submitted a new proposal identifying sites of prospective platforms to the 30th session of SUBNAV which met in December 1984, for its technical evaluation. This proposal was supported by development plans for lease tracts off Point Conception which had recently become available. The new proposal would have extended the TSS only as far as a new precautionary area off of Point Arguello because no definite information was available on any future structures to be sited beyond the precautionary area.

At its 30th session SUBNAV approved a partial extension of the TSS nearest to the known platforms. The approval allows the TSS to be extended only to a point nineteen miles beyond the Santa Barbara Channel, six miles short of the proposed precautionary area. However, SUBNAV again advised that additional extensions to the west "would probably become acceptable if another offshore platform with appropriate aids to navigation were to be established in the future . . . west of longitude 120°50' W." (Subcommittee report, number 30/11).

The SUBNAV approval of the partial extension of the TSS was conditioned on the establishment of a high powered radar beacon (racon) and a light with a

twenty mile range on platform Harvest at position 34°38.09' N, 120°40.46' W. The TSS extension cannot become effective until this condition is met or until an alternative aid to navigation is approved under the IMO process.

All TSS change approved by SUBNAV must also be adopted by the IMO Maritime Safety Committee (MSC). The nineteen mile extension of the Santa Barbara Channel TSS was adopted by the MSC in May 1985. The approved extension is a portion of segment 3 of the study area.

Findings and Conclusions

The study reaffirmed the need for a traffic routing system to the northwest of the Santa Barbara Channel. The estimated traffic volume both north and south of 15-18 vessels per day in the study area, coupled with the increasing number of proposed offshore platforms, is sufficient to justify a designated routing system.

In light of the rejection by IMO of the full extension of the Santa Barbara TSS, as proposed in the original port access study, the recommended alternative is to establish a safety fairway in the area which was not approved as a TSS. The fairway will preserve a right-of-way for navigation until such time as new structures are erected which can serve as aids to navigation, and a new TSS proposal can be submitted to IMO. After information becomes available on development prospects for nearby tracts, a study should be conducted to determine whether a TSS is needed within these fairways and whether platforms existing or planned at that time would meet IMO requirements for aids to navigation supporting a TSS.

The recommended fairway is in the same position as the previously proposed TSS, with a one-mile wide fairway in place of the traffic lanes, and a non-fairway separation area. In place of the precautionary area, the one-mile wide fairways will be connected in such a way as to permit gradual course changes for vessels transiting the area. At the northernmost point (35 degrees north latitude), these fairway areas will connect to the coastal fairway proposed by the Twelfth Coast Guard District in its study of the Central California Coast (47 FR 46043; Oct 14, 1982).

During its study, the Eleventh Coast Guard District also reaffirmed the need for a buffer zone policy with guidelines on siting of structures near TSS lanes, as described in the original port access study results (47 FR 27433; June 24, 1982). Details of the policy and guidelines are available from the Eleventh District on request. In general,

the policy is to provide a safety margin for a mobile drilling unit (MODU) or platform and allow attending vessels room to maneuver without concern for passing traffic in the adjoining lane. The intent is also to prevent the navigable portions of a traffic lane from being reducted by permanent structures adjacent to the lane.

A joint U.S. Coast Guard, Corps of Engineers and Minerals Management Service policy on siting of structures in proximity to traffic separation schemes and fairways is needed. The Coast Guard is currently working with the Corps of Engineers to develop a process, within the permit regulations, which would allow a navigation safety evaluation of a structure before a permit is issued, when it is proposed to be in proximity to a designated shipping lane.

With respect to possible impacts on other offshore activities, it was determined, in consultation with the Minerals Management Service, that 80 lease tracts might be affected by the recommended routing system. 12 tracts in this area have already been leased. Specific economic impacts on the offshore lease program were not available at the time of this study. With the modification of the eight-mile diameter precautionary area to a pair of one-mile wide fairways, the area of the tracts affected by recommendation is substantially reduced. Following is a list of tracts, identified by block number, which the Eleventh District determined would be affected by the recommended routing system.

11, 12, 13, 14, 56, 57, 58, 100, 101, 102, 103, 145, 146, 147, 189, 190, 191, 192, 234, 235, 236, 278, 279, 280, 281, 323, 324, 325, 367, 368, 369, 370, 412, 413, 414, 415, 456, 457, 458, 459, 501, 502, 503, 504, 518, 547, 936, 937, 938, 980, 981, 982, 5182, 5183, 5184, 5282, 5283, 5284, 5285, 5286, 5381, 5382, 5383, 5384, 5485, 5386, 5387, 5388, 5389, 5484, 5485, 5486, 5487, 5488, 5489, 5490, 5587, 5588, 5598, 5599

Generally, where TSS or fairway lanes are one-mile wide, underlying resources are accessible via directional drilling. In the long run, however, adjustments may be necessary to allow recovery of known deposits. In such cases, a port access study may be needed to determine whether alternative routing is possible through areas where other lease rights may be affected and whether, in the case of a TSS, the adjustment would conform with IMO guidelines.

Implementation

A notice of proposed rulemaking (NPRM) is planned for publication in 1986 to propose extension of the Santa Barbara TSS as far as it has been approved by IMO, and a shipping safety

fairway extending northward over the portion of the originally proposed TSS extension which has not received IMO approval. All comments received and alternatives evaluated during the study will be fully considered in developing the NPRM. The TSS extension and safety fairway to be proposed are described as follows:

Recommended TSS Extension

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
34°20'54" N.	120°30'06" W.
34°18'54" N.	120°30'54" W.
34°25'42" N.	120°51'45" W.
34°23'45" N.	120°52'27" W.

(b) A traffic lane for westbound traffic between the separation zone and a line connecting the following geographical positions:

34°21'48" N.	120°29'54" W.
34°26'36" N.	120°51'27" W.

(c) A traffic lane for eastbound traffic between the separation zone and a line connecting the following geographical positions:

34°18'00" N.	120°31'06" W.
34°22'48" N.	120°52'42" W.

Recommended Shipping Safety Fairway

(a) One fairway will be recommended for west and northbound traffic (an area of approximately one mile in width between rhumb lines joining the following positions):

Latitude	Longitude
34°26'36" N.	120°51'27" W.
34°28'00" N.	120°57'30" W.
34°31'15" N.	121°01'45" W.
35°00'00" N.	121°18'30" W.
35°00'00" N.	121°19'49" W.
34°30'45" N.	121°03'00" W.
34°27'00" N.	120°58'00" W.
34°25'42" N.	120°51'45" W.

(b) A second fairway will be recommended for east and southbound traffic (an area of approximately one mile in width between rhumb lines joining the following positions):

34°23'45" N.	120°52'27" W.
34°25'00" N.	120°58'30" W.
34°29'45" N.	121°05'00" W.
35°00'00" N.	121°22'48" W.
35°00'00" N.	121°24'06" W.
34°29'00" N.	121°06'00" W.
34°24'27" N.	120°59'30" W.
34°22'48" N.	120°52'42" W.

Dated: November 22, 1985.

W.J. Brogdon, Jr.

Captain, U.S. Coast Guard, Chief, Office of Navigation (Acting).

[FR Doc. 85-28910 Filed 12-4-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42002C; BH-FRL 2909-4]

Fluoroalkenes; Proposed Test Rule

Correction

In FR Doc. 85-26529 beginning on page 46133 in the issue of Wednesday, November 6, 1985, make the following corrections:

1. On page 46134, in the first column, in the eighth line of the sixth complete paragraph, "4(a)(1)(A)(i)" should read "4(a)(1)(B)(i)".

2. On page 46136, in the second column, in the twenty-fourth line of the second complete paragraph, "§ 799.1700(c)(1)(C)(2)" should read "§ 799.1700(c)(1)(i)(C)(2)": and

3. On page 46141, in the third column, in the ninth line, "VDR" should read "VDF".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-337; RM-5076; FCC 85-617]

AM-FM Program Duplication

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice proposes to amend the Commission's program duplication rules for AM-FM radio combinations to exempt the midnight to 6 AM time period from the purview of the rule. The Commission also intends to examine the need for program duplication limits in view of the current condition of the radio industry. The proposed rule change would facilitate expanded radio service in the midnight to 6 AM nighttime period.

DATES: Comments are due by January 2, 1986, and replies are due by January 17, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Proposed Rulemaking

In the matter of amendment of § 73.242 of the Commission's rules and regulations in regard to AM-FM Program duplication; MM Docket No. 85-357 and RM-5076.

Adopted: November 20, 1985.

Released: November 26, 1985.

By the Commission.

Introduction

1. By the *Notice of Proposed Rule Making (Notice)*, the Commission begins a reevaluation of § 73.242 of its Rules in regard to the duplication of programming on AM and FM radio stations that are co-owned in the same local area. The Commission is proposing to eliminate the restrictions of program duplication by AM-FM combinations. The Commission believes that this action would promote expanded radio operation and that such increased service would be in the public interest.

Background

2. Section 73.242 of the Commission's rules provides that if either station of an AM-FM combination is licensed in a community of over 25,000 population, the FM station may not devote more than 25 percent of the average program week to duplicated programming.¹ For the purposes of this rule, duplicated programming is defined as "the simultaneous broadcasting of a particular program over both the AM and FM stations or the broadcasting of a particular program by one station within 24 hours before or after the identical program is broadcast over the other station."

3. The Commission first adopted limits on the amount of program duplication by FM stations commonly owned with AM stations in the same local area in 1964.² At that time, the Commission sought to further two objectives. The first was to reduce the "inherent inefficiency" represented by duplication of the same programming on two co-located stations. The Commission also sought to foster the growth of FM radio service by promoting separate programming of FM stations. The Commission believed that increased separate programming of FM stations would encourage consumers to buy and use FM receivers. The rule as originally promulgated restricted program duplication to 50 percent by FM stations in communities of more than 100,000 population.

4. In 1974, the Commission initiated a new proceeding, Docket No. 20016, for the purpose of updating § 73.242 in light

of changed market circumstances.³ The 1976 *Report and Order* in that proceeding not only strengthened the rule but also widened its application.⁴ The new rule limited AM-FM combinations to a maximum of 25% duplication if either station served a community of more than 25,000 population. No substantive change has been made to the rule since that time.

5. On June 13, 1985, AGK Communications, Inc. (AGK) petitioned the Commission to amend § 73.242 of its Rules. AGK requests that the late night time period, midnight to 6 AM, be exempted from the purview of the program duplication rule. AGK submits that one of the rule's principal objectives, namely that of fostering the development of FM service, has been attained. Furthermore, AGK believes that it would be less wasteful of spectrum resources to permit unrestricted programming in the midnight to 6 AM time period than to have stations cease operation during this period in order to comply with the present rule.⁵ It submits that in many cases licensees need to use the time that is available for duplication under the 25% limit in other parts of the day. Supporting comments were filed by Holston Valley Broadcasting Corporation (Holston), the National Association of Broadcasters (NAB), and TETCO, Inc. (TETCO).

6. In its comments in support of the AGK petition, NAB argues that it is inconsistent for the Commission not to require any programming in the graveyard period and yet to penalize broadcasters for voluntary service in this period, even if on a duplicated basis. NAB also suggests that it may be appropriate for the Commission to revisit the entire matter of the program duplication rule. TETCO, in its comments, argues that § 73.242 is "no longer justified in light of the deregulation of radio, the proliferation of FM stations and . . . the fundamental right of the licensee to broadcast in the public interest."

Discussion

7. Upon consideration of AGK's petition and the statements of the

¹ See 47 CFR 73.242.

² See Report and Order in Docket No. 15084, 45 FCC 1515 (1964).

³ AGK points out that the Commission in past actions has acknowledged the low listenership of the graveyard period and has recognized the period to be suitable for experimental operation of AM stations. See *Operation of Visual and Aural Transmitters of TV Stations*, 48 RR 2d 373, 374 (1980), *Report and Order amending § 73.653 of the Commission's Rules*; and § 73.1510(c)(3) of the Commission's Rules.

commenting parties, we believe that changes to the program duplication rule may be warranted. We recognize that the structure and economic condition of the radio industry, in particular that of the FM service, have changed significantly since the current rule was adopted. In view of these changed circumstances, we believe that to permit increased program duplication would provide public interest benefits in terms of increased radio service. Furthermore, we believe these benefits can be realized with only a minimal effect of spectrum resources.

8. As discussed above, one of the Commission's principal objectives in adopting the program duplication rule was to promote separate programming for FM stations and, thereby, to foster the growth of the FM radio service. We agree with the petitioner and the commenting parties that FM radio stations are now fully competitive in the radio industry and that it is no longer necessary to foster the development of the FM service through program duplication limits. Numerous reports in the trade press, audience research survey reports, and other published sources support this assessment.⁶ FM listenership now exceeds that of the AM service and FM stations are now a primary economic force in the radio industry. On this basis, we believe it is no longer necessary to maintain the program duplication rule for the purpose of fostering FM development.

9. We also believe that the kind of unrestricted, full-time program duplication that characterized the early years of the FM service is less likely to occur now. We believe that to permit increased program duplication now generally would not result in inefficient use of the broadcast radio channels. In this respect, we recognize that the service areas of AM and FM combined stations often do not fully coincide. If one of the stations in such a combination were off-the-air as a result of the program duplication limit, then some listeners would be denied a service they might otherwise receive. Thus, we believe that elimination of the program duplication rule could contribute to expanded radio service and would not be an inefficient use of the spectrum.

10. Furthermore, in cases where the potential audience of the combined

⁶ For example, the Spring 1985 RADAR survey by Statistical Research, Inc. estimates that FM's share of all radio listening (7 days, 24 hours, all persons 12+) is 70.8%. FM's dominance of audience share is all the more remarkable in view of the fact that, as indicated by our own data, AM stations still outnumber FM stations by 4963 to 4236.

stations is of sufficient size and diversity to support separate programming, market forces are likely to lead licensees to provide that programming in order to reach the maximum number of listeners. On the other hand where it is not economically desirable to program combined stations separately, it seems preferable to allow stations to duplicate programming rather than have one of the stations go off-the-air and deny service to some portion of the potential audience. As stated by AGK, program duplication may be particularly desirable during the late night period when audiences, in general, are substantially smaller than at other times. During the nighttime period when listenership is low, many AM-FM combinations may not find it economically desirable or feasible to program their stations separately.

11. Finally, we believe that many heretofore profitable AM stations are presently experiencing financial distress due to the remarkable growth of the FM service. In fact, we believe that for many AM-FM combinations it is now the case that the viability of the AM station depends on its association with a stronger FM facility. A reduction of AM operating expenses at this particular time could mean the difference between success or failure for marginal AM stations and whether such stations continue to provide service to the population in their local communities.

12. Accordingly, we are proposing to eliminate the program duplication limits of § 73.242 of the Commission's rules. We invite comments on this proposal. In particular, we request comment on the effects that eliminating the program duplication rule might have in terms of spectrum efficiency, the expansion of broadcast radio service, and the viability of AM stations.

Regulatory Flexibility Act—Initial Analysis

13. *Reason for Action.* Elimination of the AM-FM program duplication rule is expected to provide needed programming flexibility to AM-FM combinations.

14. *Objective.* The Commission is proposing to eliminate the AM-FM program duplication rule to remove unnecessary regulation and to encourage increased nighttime radio service.

15. *Legal Basis.* The proposed amendment is authorized under section 303 of the Communications Act of 1934, as amended, which charges the Commission to explore new and improved uses of radio.

16. Description, Potential Impact and Number of Small Entities Affected.

Eliminating the program duplication rule is expected to benefit licensees of AM-FM combinations. In particular, it may benefit those licensees that are only marginally profitable or that cannot command nighttime audiences sufficient to make separate programming profitable. Accordingly, this amendment is expected to improve profitability and thereby prevent a station from going off-the-air at night. We do not know the exact number of AM-FM combinations which might choose to avail themselves of the opportunity to increase duplicated programming, however we expect this to be a small percent of all stations.

17. Federal Rules which Overlap, Duplicate or Conflict with this Rule. None.

18. *Significant Alternatives.* The alternatives are to maintain the status quo or to exempt the midnight to 6 AM time period from the AM-FM program nonduplication rule, as proposed by AGK. The Commission believes that these alternatives would unnecessarily restrict the programming decisions of licensees of combined AM-FM radio stations.

Procedural Matters

19. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

20. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantial disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submitted a written *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's

Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1201 of the Commission's Rules.

21. Pursuant to procedures set out in § 1.415 of the Commission's Rules, interested parties must file comments on or before January 2, 1986, and reply comments on or before January 17, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

22. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. 601 et seq.) (1981).

23. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, an original and 5 copies of all comments, replies, or other documents filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also wish each Commissioner to have a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in the rule making proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the Docket Number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission's Dockets Reference Room (room 239) at its headquarters in

Washington, DC (1919 M Street, Northwest).

24. This Notice of Proposed Rule Making is issued pursuant to authority contained in sections 4(i) and 303 of the Commission's Act of 1934, as amended.

25. For further information concerning this proceeding, contact Alan Stillwell, Mass Media Bureau, (202) 632-6302.

Federal Communications Commission
William J. Tricarico,
Secretary.

Appendix

PART 73—[AMENDED]

Part 73 of Title 47 of the Code of Federal Regulations is proposed to be amended to read as follows:

1. The authority citation for Part 73 would continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

§ 73.242 [Removed]

2. 47 CFR 73.242 is proposed to be removed.

[FR Doc. 85-28641 Filed 12-4-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 177, 178 and 180

[Docket Nos. HM-183, 183A; Notice No. 85-4]

Requirements for Cargo Tanks; Corrections and Clarifications

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking; Corrections and Clarifications.

SUMMARY: This document corrects and clarifies a notice of proposed rulemaking that appeared beginning at page 37768 in the *Federal Register* of Tuesday, September 17, 1985 (50 FR 37766). In the proposed rule, RSPA seeks to amend the requirements in the Hazardous Materials Regulation (49 CFR Parts 171-179) pertaining to the manufacture of cargo tanks and the operation, maintenance, repair and requalification of all specification cargo tanks.

FOR FURTHER INFORMATION CONTACT: Charles Hochman (202) 755-4906, Office of Hazardous Materials Transportation, U.S. Department of Transportation, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In Docket Nos. HM-183, 183A; Notice No. 85-4, published on September 17, 1985 (50 FR 37766), make the following corrections:

1. On page 37789, second column, the first sentence of the fourth full paragraph should read:

"Notwithstanding these marking and manufacturing inconsistencies, each MC 300, 301, 302, 303, 304, 305, 306, 310, 311, and 312 cargo tank has been pressure tested to at least 3 psig."

2. On page 37769, second column, in the penultimate line, the word "shall" should read "shell".

3. On page 37789, third column, in the sixth and twelfth lines of the last paragraph, the term "hazardous wastes" should read "waste materials".

4. On page 37770, third column, in the eighth line of the third full paragraph, the reference "§ 173.24(d)" should read "§ 173.24(e)".

5. On page 37771, second column, in the eleventh line of the first full paragraph, the reference "§ 180.307(a)" should read "§ 180.407(a)".

6. On page 37771, third column, in the first line of the last paragraph, add "loan/" immediately to precede the word "unload".

7. On page 37772, second column, in the fourth line of the last paragraph, the abbreviation "MIB's" should read "MTB's".

8. On page 37773, second column, in the fifth line of the penultimate paragraph, the reference "§ 180.317" should read "§ 180.417".

9. On page 37773, third column, the last sentence of the last full paragraph should read: "Section 178-337-11 would also require that cable linkages for the internal valves be corrosion resistant."

10. On page 37778, third column, in the fourteenth line from the top, the words, "Non self-closing" should read "Self-closing" and at the end of the paragraph a sentence is added to read: "This section would also require that cable linkages for the internal valves be corrosion resistant."

11. On page 37778, third column, in the seventh line of the third full paragraph, the reference "§ 180.305(g)" should read "§ 180.405(g)".

12. On page 37781, first column, add item 1A to read:

1A. In § 171.2, paragraph (e) would be added to read as follows:

§ 171.2 General requirements.

(e) When a person performs a function covered by or having an effect on a specification prescribed in Part 178, 179 or 180 of this subchapter, an approval issued under this subchapter, or an

exemption issued under Subchapter B of this chapter, that person must perform the function in accordance with that specification, approval or exemption, as appropriate.

13. On page 37781, second column, in proposed § 171.7(d)(1), "December 31, 1984" should read "June 30, 1985".

14. On page 37781, third column, in § 171.8, in the ninth line of the proposed definition for "cargo tank", the word "and" should read "or".

15. On page 37782, first column:

a. The amendatory language in item 9 is corrected to read as follows:

"9. In 173.22, the introductory text to paragraph (a)(2) would be revised to read as set forth below and paragraph (b) would be removed and reserved."

b. 173.22, add the words, "the following" immediately before the colon symbol at the end of paragraph (a)(2) and remove the text of paragraph (b) and insert the word [Reserved].

16. On page 37782, second column, proposed § 173.33(a)(2) should read:

(a) * * *

(2) Two or more materials may not be shipped in the same cargo tank motor vehicle if, as a result of any mixture of the materials (including their vapors), an unsafe condition would occur, such as an explosion, fire, excessive increase in pressure, or the release of toxic vapors.

* * * * *

17. a. On page 37782, second column, in proposed § 173.33, in paragraph (b)(2), add the word "a" immediately to precede the word "hazardous".

b. Paragraph (b)(2)(ii) should read:

(b) * * *

(2) Due to its density, exceeds the maximum weight of lading marked on the specification plate.

* * * * *

18. On page 37782, second column, in the last line of proposed § 173.33(c)(2), the word "of" should read "or".

19. On page 37782, third column, in proposed § 173.33, in the fourth line of paragraph (d)(1), the word "should" should read "may"; add a sentence at the end of paragraph (d)(1) to read: "The requirements in this paragraph do not apply to MC 38 cargo tank motor vehicles transporting a cryogenic liquid or to MC 330, MC 331 and MC 338 cargo tank motor vehicles transporting a material described in part as a refrigerated liquid in § 172.101 of this subchapter"; and remove paragraph (e).

20. On page 37784, first column, proposed § 173.145(a)(7) (i) and (ii) should read:

§ 173.145 Dimethylhydrazine, unsymmetrical, and methylhydrazine.

- (a) * * *
- (7) * * *
 - (i) The design pressure of the cargo tank must be at least 25 psig.
 - (ii) Each cargo tank must be equipped with steel pressure relief valves conforming to § 178.342-10 of this subchapter.
- * * * 21. On page 37784, second column, proposed § 173.154(a)(4) should read:

§ 173.154 Flammable solids, organic peroxide solids and oxidizers not specifically provided for.

- (a) * * *
- (4) Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions.

(i) Authorized only for sodium perchlorate or magnesium perchlorate, wet, with 10 percent or more water, equally distributed within the cargo tank.

(A) A cargo tank may have heating coils if an inorganic heating medium is used.

(B) Only a Specification MC 304 or MC 307 cargo tank motor vehicle is authorized for transportation by vessel.

(ii) Only a Specification MC 304, MC 307, MC 310, MC 311, or MC 312, cargo tank motor vehicle is authorized for potassium nitrite. Also authorized for ammonium nitrate with 15 percent or more water in solution at a maximum temperature of 240 °F., if the cargo tank is insulated and designed for operation at temperature up to 250 °F.

Transportation by vessel is not authorized.

(iii) Bottom outlets must conform to § 178.340-11(a)(1)(i) of this subchapter.

(iv) The pressure relief system must conform to § 178.342-10 of this subchapter, except that the pressure relief valve must be set-to-discharge at the cargo tank design pressure.

* * * 22. On page 37784, third column, in proposed § 173.190(b)(4)(ii), add the words "form or equivalent" immediately before the word "insulation".

23. On page 37785, first column, proposed § 173.224(a)(4)(iv) is added to read:

- (a) * * *
- (4) * * *
 - (iv) Pressure relief system must conform to § 178.342-10 of this subchapter.

24. On page 37785, first column, in proposed § 173.245(a)(29)(iii), the word "conforming" should read "conform".

25. On page 37786, first column, in the introductory text of proposed § 173.252(a)(4), add "MC 311" immediately before "or MC 312".

26. On page 37787, first column, add a sentence at the end of proposed § 173.266(f)(2)(i) to read: "Additionally, a MC 312 cargo tank may be fabricated of Type 304L, 316 or 316L stainless steel."

27. On page 37788, third column, proposed § 173.294(a)(3)(i) should read:

- (a) * * *
- (3) * * *

(i) Each tank must be fabricated from, Type 304 or Type 316 stainless steel, 99 percent pure nickel plates, titanium conforming to ASME SA-265, or be suitably lined with nickel or stainless steel.

* * * 28. On page 37790, third column, in proposed § 173.374, add paragraph (a)(4)(v) to read:

- (a) * * *
- (4) * * *

(v) Bottom outlets must conform to § 178.340-11(a)(1)(i) of this subchapter.

* * * 29. On page 37791, second column, in proposed § 177.814, the reference "§ 180.317" should read "§ 180-417".

30. On page 37792, second column, in the seventh line from the top in proposed § 178.337-3(b), the word "must" should read "must".

31. On page 37792, second column, proposed § 178.337-3(b) (7) and (8) should read:

§ 178.337-3 Structural integrity.

- (b) * * *

(7) The lateral shear stress due to a lateral accelerative force equal to twice the weight of the fully loaded vehicle applied at the road surface; and

(8) The torsional shear stress due to a lateral accelerative force equal to twice the weight of the fully loaded vehicle applied at the road surface.

* * * 32. On page 37792, the formula in the first line of the third column in proposed § 178.377-3(c) should read:

$$S = 0.5(S_y + S_x) + [S_y^2 + (0.25(S_y - S_x)^2)]^{0.5}$$

33. On page 37793, first column, in the thirteenth line from the top in proposed § 178.337-3(e)(2), the word "paid" should read "pad".

34. On page 37793, first column, the section numbers "§ 178.377-4" and "§ 178.337-6" should read "§ 178.337-4" and "§ 178.337-6" respectively; the section number "§ 178.337-8" should

read "§ 178.337-8", and paragraph (a)(2) in that section is added to read:

§ 178.337-8 Outlets.

- (a) * * *

(2) With the exception of gauging devices, thermometer wells, and pressure relief valves, each opening in a cargo tank intended for use in transporting a compressed gas (except carbon dioxide, refrigerated liquid) must be—

(i) Closed with a plug, cap or bolted flange;

(ii) Protected with an excess flow valve on product discharge openings or protected with a check valve on product inlet openings; or

(iii) Fitted with an internal self-closing stop valve as specified in § 178.337-11(a).

* * * 35. On page 37793, third column, in proposed § 178.337-11 the introductory text in paragraph (a), and paragraphs (a)(1), (a)(1)(i), and the first sentence in (a)(1)(ii) should read:

§ 178.337-11 Emergency discharge control.

(a) *Excess flow valves, back flow check valves and self-closing stop valves.*

(1) When required by § 178.337-8(a)(2):

(i) Each internal self-closing stop valve and excess flow valve must automatically close if any of its attachments are sheared off or if any attached hoses or piping are separated.

(ii) Each self-closing stop valve, excess flow valve, or check valve must be located inside the tank or inside a welded nozzle which is an integral part of the tank.

36. On page 37794, first column, in proposed § 178.337-11, [redesignate paragraphs (a)(1)(vii) and (a)(1)(viii) as new paragraphs (a)(2)(i) and (a)(2)(ii); in paragraph (a)(3) remove the last sentence.

37. On page 37794, second column, in proposed § 178.337-11, in the fifth line in paragraph (b) remove the word "automatic", in the seventh line, the word "outboard" should read "ahead"; and the last sentence should read: "A single so-called "stop-check" or excess flow valve may not be used to satisfy the requirements of this paragraph except as provided in paragraph (c) of this section."; in the third line of paragraph (c)(1), the word "excessive" should read "excess".

38. On page 37795, first column, proposed § 178.338-3(b) (7) and (8) should read:

§ 178.338-3 Structural integrity.

(b) * * *

(7) The lateral shear stress due to a lateral accelerative force equal to twice the weight of the fully loaded vehicle applied at the road surface; and

(8) The torsional shear stress due to a lateral accelerative force equal to twice the weight of the fully loaded vehicle applied at the road surface.

39. On page 37795, second column, the formula in the third line in proposed § 178.338-3(c) should read:

$$S = 0.5(S_y + S_x) + [S_y^2 + (0.25(S_y - S_x)^2)]^{1/2}$$

40. On page 37797, second column, in proposed § 178.340-1(i), from the top the word "composes" in the heading, should read "composed".

41. On page 37798, second column, proposed § 178.340-3(b) (7) and (8) should read:

§ 178.340-3 Structural integrity.

(b) * * *

(7) The lateral shear stress due to a lateral accelerative force equal to twice the weight of the fully loaded vehicle applied at the road surface; and

(8) The torsional shear stress due to a lateral accelerative force equal to twice the weight of the fully loaded vehicle applied at the road surface.

42. On page 37798, second column, the formula in proposed § 178.340-3(c) should read:

$$S = 0.5(S_y + S_x) + [S_y^2 + (0.25(S_y - S_x)^2)]^{1/2}$$

43. On page 37799, first column, proposed § 178.340-5 (b) and (c) should read:

§ 178.340-5 Manhole assemblies.

(b) Unless otherwise provided in the applicable individual specification, each manhole, fill opening and washout assembly must be structurally capable of withstanding, without leakage or permanent deformation, static internal fluid pressures of at least 36 psig, or test pressure, whichever is greater.

(c) Each manhole, filler and washout cover must be fitted with a safety device that prevents the cover from opening fully when internal pressure is present.

44. On page 37799, second column, the section heading in proposed § 178.340-8 should read "Accident damage protection"; in the second line of the introductory text in paragraph (a), the word "values" should read "valves".

45. On page 37800, second column, the last sentence in proposed § 178.340-8(d)

should read: "The rear-end tank protection device must have a horizontal dimension at least equal to that of the cargo tank and a vertical dimension of at least 8 inches, and located at a height so as to minimize damage to the cargo tank, and its valves, fittings, or piping which could result in a possible loss of lading."

46. On page 37800, second column, in proposed § 178.340-9, at the end of the second line in paragraph (a) immediately after the word "vehicle", add the words, "that may pressurize the cargo tank"; in the fifth line in paragraph (f), the word "charing" should read "charging".

47. On page 37800, third column, in proposed § 178.340-10, in the fourth line in paragraph (b)(2), the word "value" should read "valve"; in the first line in paragraph (b)(5), the word "of" should read "or".

48. On page 37801, first column, in proposed § 178.340-10(d)(1), in the sixth line the word "value" should read "valve"; in the eight line the word "then" should read "than".

49. On page 37802, third column, in the second line in proposed § 178.340-14(b)(5), the abbreviation "Tem." should read "Temp."

50. On page 37806, second column, the column headings in the table in proposed § 180.405(c) should be reversed in sequence.

51. a. On page 37807, second column, proposed § 180.405(g)(2) is revised to read:

(g) * * *

(2) The owner of 5 or more DOT Specification cargo tanks requiring retrofit of the manhole closure must retrofit at least 20 percent of the affected cargo tanks each year beginning in 198X.

b. In the sixth line in paragraph (i) the reference "§ 180.313 and 180.307" should read "§ 180.413 and 180.407".

52. On page 37808, third column, at the bottom of the page, after the last entry which now reads "MC 304, 307", in the table in proposed § 180.407, add a new entry to read:

Specification	Test pressure
MC 307 (manufactured after the effective date of the final rule or bearing an ASME Code "U" stamp)	1.5 times the design pressure

53. On page 37809, first column, proposed § 180.407(g)(2)(iii) is revised to read:

(8) * * *

(2) * * *

(iii) Each owner of 5 or more DOT Specification cargo tanks that must be

pressure tested every five years must pressure test at least 20 percent of the cargo tanks in his ownership each year beginning in 198X.

54. On page 37809, third column, the paragraph heading in proposed § 180.409(a) should read: *External visual inspection and test, internal visual inspection, lining inspection, and leakage test.*

55. On page 37811, third column, in proposed § 180.417(c)(1)(ii), the abbreviation "ASEM" should read "ASME".

In addition to these corrections and clarifications, RSPA wishes to clarify the difference between the leakage test, in proposed § 180.407(h), and the pressure test (hydrostatic and pneumatic), in proposed § 180.407(g). The leakage test is used to verify the leak tightness of a cargo tank and may be performed and certified by the owner. The pressure test is used to verify the structure and pressure integrity of a cargo tank and must be witnessed and certified by an Authorized Inspector.

Issued in Washington, DC on November 27, 1985, under the authority delegated in 49 CFR Part 106, Appendix A.

Alan L. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 85-28791 Filed 12-4-85; 8:45 am]

BILLING CODE 4910-80-N

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Finding on Desert Tortoise Petition**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The Service announces its 12-month finding on the petition to list the desert tortoise as an endangered species. A finding was made that listing of the desert tortoise throughout its range is warranted, but precluded by other pending proposals of higher priority. Additional data are being gathered and existing data are being further evaluated.

DATE: The finding announced in this notice was made on September 18, 1985. The Service continues to seek and accept data on the species on an ongoing basis.

ADDRESSES: Information, comments, or questions should be submitted to the Associate Director-Federal Assistance (OES), U.S. Fish and Wildlife Service, Washington, D.C. 20240. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Room 500-Broyhill Building, Washington, D.C. 20240 (703/235-2771 of FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

The 1982 Amendments to the Endangered Species Act require a finding to be made within 12 months of petition receipt for any petition accepted for review in accordance with paragraph (A) or (D)(i) of Section 4(b)(3) as amended. Pursuant to paragraph (B) or (D)(ii) of Section 4(b)(3), this determines whether the requested action is warranted in light of our status review and all other information in our administrative record.

On September 14, 1984, the Service received a petition to list the desert tortoise (*Gopherus agassizii*) as an endangered species throughout its remaining range in Arizona, California, and Nevada (the Beaver Dam slope population of the desert tortoise in Utah was listed as threatened with critical habitat in 1980). The desert tortoise also occurs in adjacent Mexico (Sonora and Sinaloa). The petitioners were Martha L. Stout (Defenders of Wildlife), Faith T. Campbell (Natural Resources Defense Council), and Michael J. Bean (Environmental Defense Fund). A 90-day finding that the petition had presented substantial information indicating that the requested action may be warranted was made on December 14, 1984, and notice of the finding was then published in the April 2, 1985, *Federal Register* (50 FR 13054).

The petitioners submitted the Desert Tortoise Council's 838-page report "The Status of the Desert Tortoise (*Gopherus agassizii*) in the U.S." as supporting information. Following the announcement of the petition in the *Federal Register*, the Service received numerous comments some of which included additional data. The Service reviewed the Desert Tortoise Council's report, all comments and available data received, and all other data in its files. Involved Federal and State agencies and other parties were also contacted.

The range of the desert tortoise encompasses portions of California, Nevada, Utah, and Arizona in the United States and Sonora and Sinaloa in Mexico (Patterson 1982). The desert tortoise occurs in the Mojave Desert of California, Nevada, Utah, and northern Arizona; the Colorado Desert of California; and the Sonoran Desert of Arizona and Mexico. Desert tortoises are primarily found on flats and bajadas of the Colorado and Mojave deserts, and predominately occur on slopes in the Sonoran Desert (Berry 1984). The desert tortoise is long lived and herbivorous. Individuals do not reach sexual maturity until 12 to 20 years of age (Woodbury and Hardy 1948). The shell does not completely ossify until five or ten years of age (Luckenbach 1982). Female tortoises excavate nests in burrows and lay an average of 4.2 eggs. Females lay an average of 1.89 clutches per year (Turner and Berry 1984). Hatching success of clutches is generally unknown; and hatchlings do not normally receive parental care.

Some desert tortoise populations in the southwestern United States are declining (Bury 1982; Luckenbach 1982; Berry 1984). The degree of the decline varies greatly across the range of the desert tortoise, with highest mortalities and habitat losses occurring in California and Nevada. However, the highest densities remaining occur in California, where some relatively small areas contain over 250 tortoises per square mile. Mortality rates in the western Mojave Desert are estimated to be 18 percent per year. The Colorado Desert populations experience much lower mortality, 2 percent per year. Parts of Nevada show steep declines (Berry 1984). Berry (1984) suggests that Arizona populations are declining because they appear to consist of fragmented populations and are composed predominantly of older individuals. However, Taubert (1985) and Fritts (1985) considered Arizona populations not to be isolated from one another. Although the desert tortoise is declining throughout part of its range, and the species has been extirpated from some areas, other large populations still remain.

The Service believes that for certain areas of the species' range (Arizona and Mexico) additional data are necessary to determine accurately the species' status in that portion of its range; different interpretations of some data (Arizona and Nevada) exist. Consequently, the desert tortoise was kept in Category 2 of the Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species

published in the *Federal Register* on September 18, 1985 (50 FR 37953).

The Service will gather additional data and will further evaluate the existing data on the desert tortoise. Following further evaluation of existing and any new data, the Service will readdress the question of whether the declining populations constitute a significant portion of the species' range. Current information in the Service's files supports a finding that the petitioned action is warranted. However, such a conclusion could change due to the data gaps that presently exist. The Service has the option to list the tortoise throughout its range or list those populations currently facing the highest degree of threat, while studies proceed to resolve existing questions regarding remaining portions of the species' range. If ongoing studies indicate that listing certain populations is not warranted, then a new finding will be made and a notice indicating such will be published in the *Federal Register*.

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. Expeditious progress in listing endangered and threatened species is being made, and is reported annually in the *Federal Register*. The most recent progress report was published on May 10, 1985 (50 FR 19761).

The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the desert tortoise.

Literature Cited

- Berry, K.H. 1984. The status of the desert tortoise (*Gopherus agassizii*) in the United States. Report to the U.S. Fish and Wildlife Service from the Desert Tortoise Council on Order No. 11310-0083-81.
- Bury, R.B. 1982. An overview. In R. B. Bury, ed. *North American Tortoises: Conservation and Ecology*. Wildlife Research Report 12, Washington, D.C. U.S. Department of the Interior, Fish and Wildlife Service.
- Fritts, T.H. 1985. Ecology and conservation of North American tortoises (genus *Gopherus*). II. Evaluation of tortoise abundance based on tortoise sign detected in field surveys. U.S. Fish and Wildlife Service, Denver Wildlife Research Center, Museum of Southwestern Biology, University of New Mexico.
- Luckenbach, R. 1982. Ecology and management of the desert tortoise (*Gopherus agassizii*) in California. In R.B. Bury, ed. *North American Tortoises*:

Conservation and Ecology. Wildlife Research Report 12. U.S. Department of the Interior, Fish and Wildlife Service.

Patterson, R. 1982. The distribution of the desert tortoise (*Gopherus agassizii*). In R.B. Bury, ed. North American Tortoises: Conservation and Ecology. U.S. Department of the Interior, Fish and Wildlife Service. Wildlife Research Report 12.

Taubert, B.D. 1985. Update of desert tortoise (*Gopherus agassizii*) distribution in Arizona. Arizona Game and Fish Department.

Turner, F.B. and K.H. Berry. 1984. Population ecology of the desert tortoise. Southern California Edison Company.

Woodbury, A.M. and R. Hardy. 1948. Studies of the desert tortoise, (*Gopherus agassizii*). Ecol. Monogr. 18:145-200.

Author

This notice was prepared by E. LaVerne Smith, office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975 or FTS 235-1975).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 et seq.; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: November 22, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-23882 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

Migratory Bird Hunting Regulations on Federal Indian Reservations, Indian Territory and Ceded Lands

AGENCY: Fish and Wildlife Service; Interior.

ACTION: Notice of intent: request for proposals from Indian tribes desiring special migratory bird hunting regulations for the 1986-87 hunting season.

SUMMARY: The purpose of this notice is to request proposals from Indian tribes that wish to establish special migratory bird hunting regulations for the 1986-87 hunting season, under the interim guidelines implemented for this purpose on September 3, 1985. The proposal should include the details described later in this document. The Service also

welcomes comments concerning this Notice.

DATE: Proposals and comments should be submitted by February 1, 1986, or as soon thereafter as possible. A later Federal Register Notice will announce the closing date.

ADDRESSES: All proposals and comments should be submitted to Director, FWS/MBMO, U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matador Building, Washington, DC 20240. A copy of the proposal should be sent to the appropriate Service Regional Office at the address shown near the end of this document.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202) 254-3207.

SUPPLEMENTARY INFORMATION:

Introduction

In the September 3, 1985, *Federal Register* (50 FR 35762-35765), the United States Fish and Wildlife Service implemented interim guidelines for migratory bird hunting regulations on Federal Indian reservations, Indian Territory, and ceded lands, and established special hunting regulations for certain tribes in the 1985-86 hunting season.

The Service has kept the comment period open indefinitely on the guidelines but will employ them to establish special migratory bird hunting regulations for interested Indian tribes for the 1986-87 hunting season.

Background

Proposed guidelines for establishing special Indian hunting regulations were published on June 4, 1985, (50 FR 23459-23470 and particularly 23467-23468) and included possibilities for: (1) On-reservation hunting (including Indian Territory), by both tribal and non-tribal members, with hunting by non-tribal members on some reservations to take place within Federal frameworks but on dates different from those selected by surrounding State(s); (2) on-reservation hunting (including Indian Territory) by tribal members only, outside of usual Federal frameworks; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the closed season requirement mandated by the 1916 Migratory Bird

Treaty with Canada. The guidelines are capable of application to those tribes that have recognized reserved hunting rights on Federal Indian reservations (including Indian Territory) and ceded lands. They also apply to establishing migratory bird hunting regulations for non-tribal members on reservations and Indian Territory where tribes have gained full wildlife management authority by judicial decisions or other means. In cases where the scope of tribal management authority is unclear, the Service, on request, will consult with tribal and State officials with the aim of reaching mutual agreement on tribal hunting regulations. The Service also will consult jointly with tribal and State officials in the affected State(s) where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

The Service recognizes that some changes in the guidelines may be necessary, and they should not be viewed as inflexible. Nevertheless, the Service believes that they provide appropriate opportunity to accommodate the reserved hunting rights of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount.

The guidelines may be used by tribes desiring special migratory bird hunting regulations for tribal or non-tribal members. The guidelines are not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located. In instances where a tribe may wish for the Service to recognize traditional on-reservation (including Indian Territory) hunting practices of tribal members, the guidelines provide a means for the Service and tribe to reach mutual agreement by means of a memorandum of understanding that has recently been developed for this purpose.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special regulations for the 1986-87 hunting season should submit a proposal that includes: (1) The requested hunting season dates and other details regarding regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities

to establish and enforce migratory bird hunting regulations.

Pertinent details in proposals received from tribes will be published for public review in a later Federal Register.

Because of the lengthy time required for Service and public review, Indian tribes that desire special migratory bird hunting regulations for the 1986-87 hunting season should submit their proposal soon. Tribal inquiries regarding the guidelines and proposals should be directed to the appropriate Service Regional Office.

FISH AND WILDLIFE SERVICE REGIONAL OFFICES

(Address: Regional Director, U.S. Fish and Wildlife Service)

States	Address	Telephone No.
California, Hawaii, Idaho, Nevada, Oregon, Washington;	Lloyd 500 Bldg., Suite 1692, 500 NE Multnomah Street, Portland, OR 97232.	503/231-6116
Arizona, New Mexico, Oklahoma, Texas;	PO Box 1306, 500 Gold Avenue SW—Room 1306, Albuquerque, NM 87103.	505/766-2321
Iowa, Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, Wisconsin.	Federal Building, Fort Snelling, Twin Cities, MN 55111.	612/725-3563
Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Connecticut, Delaware, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia.	Richard B. Russell Federal Bldg., Room 1200, 75 Spring Street SW, Atlanta, GA 30303.	404/221-3568
Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, Wyoming, Alaska	One Gateway Center, Suite 700, Newton Corner, MA 02158. PO Box 25486, Denver Federal Center, Denver, CO 80225. 1011 E Tudor Road, Anchorage, AK 99503.	617/965-5100 303/236-7620 907/786-3542

List of Subjects in 50 CFR Part 20

Hunting, Wildlife.

Dated: November 29, 1985.

F. Eugene Hester,

Deputy Director.

[FR Doc. 85-28870 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 50, No. 234

Thursday, December 5, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CENTRAL INTELLIGENCE AGENCY

CIA Retirees Health Insurance Coverage; Notice of Possible Change

AGENCY: Central Intelligence Agency.
SUBJECT: CIA Retirees Health Insurance Coverage.

CIA retirees should be aware that there is a possibility of a change to the Organization's health insurance plan. Please call (703) 351-2627 (collect) for information before close of business December 6, 1985, which is the end of Open Season.

Harry E. Fitzwater,
Deputy Director for Administration.

[FR Doc. 85-29065 Filed 12-4-85; 10:47 am]
BILLING CODE 6310-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT:
James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder

and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than December 26, 1985 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 83-3A024."

Applicant: U.S. Export & Trading Company, P.O. Box 1698, Carlsbad, California 92008
Application #: 83-3A024
Date Deemed Submitted: November 22, 1985.
Members (in addition to applicant): None

Summary of the Application

U.S. Export & Trading Company ("USEXP") seeks to amend the certificate issued to it on December 23, 1983 (#83-00024; 48 FR 57352, December 29, 1983), and first amended on March 20, 1985 (#83-A0024; 50 FR 11924, March 26, 1985). USEXP submitted and later withdrew a prior application for a second amendment (#83-2A024; 50 FR 41375, October 10, 1985). In this application USEXP seeks certification: (1) To change the products covered by the Export Trade Certificate of Review to "high impact" ultraviolet-resistant polyvinyl chloride (UVR-PVC) compounds and irrigation pipes, fittings, and related products; (2) to act as the exclusive export sales representative for PROMARK (Indio, California), Action Development and Marketing (Carlsbad, California), and Brownline Pipe

Company, Inc. (Laguna Hills, California); (3) to enter into exclusive agreements with agents and distributors in the Export Markets; (4) to set independently or with its suppliers price, quantity, territory and customer restrictions for the Export Markets; and (5) to act as an exclusive or non-exclusive supplier of high-impact UVR-PVC compounds and pipes, fittings and related products, and the technology to make pipes, fittings and related products from the compounds, to buyers in the Export Markets.

Dated: December 2, 1985.

George Muller,

Acting Director, Office of Export Trading, Company Affairs.

[FR Doc. 85-28900 Filed 12-4-85; 8:45 am]

BILLING CODE 3510-DR-M

Short Supply Review on Galvanized Wire: Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 4 of the U.S.-EC Arrangement on Complementary Products with respect to high tensile strength galvanized wire.

EFFECTIVE DATE: Comments must be delivered no later than December 16, 1985.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT:
Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., Washington, D.C., Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: Article 4 of the U.S.-EC Arrangement on Complementary Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to

meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

We have received a short supply request for hot dipped, galvanized, high carbon, drawn wire, .026-inch in diameter, with a tolerance of +.0000, -.0005 and tensile strength of 251,000-289,000 P.S.I.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission. It will be held in strict confidence by the Department. However, a non-proprietary submission must be provided for placement in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,
Acting Deputy Assistant Secretary for Import Administration
November 27, 1985.
[FR Doc. 85-28903 Filed 12-4-85; 8:45 am]
BILLING CODE 3510-DS-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6764-003 et al.]

Hydroelectric Applications (BMB Enterprises, Inc., et al.) / Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. a. Type of Application: License (Minor).

b. Project No: 8764-003.

c. Date Filed: November 15, 1984.

d. Applicant: BMB Enterprises, Inc.

e. Name of Project: Sixmile Creek.

f. Location: On Sixmile Creek in Sanpete County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Bradley F. Hutchings, 690 West 2350 North, West Bountiful, Utah 84067.

i. Comment Date: January 6, 1986.
j. Description of Project: The proposed project would be located both on the lands of the Manti-La Sal National Forest and of the State of Utah and would consist of: (1) An overflow intake structure, with trashrack, located on Sixmile Creek at elevation 6,720 feet m.s.l.; (2) a coal tar coated and wrapped steel pipeline penstock, 24 inches in diameter and about 10,480 feet long; (3) a powerhouse, at elevation 6,120 feet m.s.l., to contain a Pelton type turbine-generator unit rated at 1,200 kW; (4) a tailrace returning flow to Sixmile Creek; (5) a 46-kV transmission line, about 17,470 feet long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 4,224 GWh.

k. Purpose of Project: Project energy would be sold to the Utah Power & Light Company or to municipal systems.

l. This notice also consists of the following standard paragraphs: B, C, D1.

m. This application has been accepted for filing as of October 12, 1982, the submittal date of the applicant's originally accepted exemption application pursuant to *Eagle Power Co.*, 28 FERC ¶61,061, issued July 18, 1984.

2. a. Type of Application: Preliminary Permit.

b. Project No: 9206-000.

c. Date Filed: May 20, 1985.

d. Applicant: Crow Hydro, Inc.

e. Name of Project: Crow Creek Pumped Storage.

f. Location: On Granite Springs and Crystal Lake Reservoirs in Laramie County, Wyoming within the Curt Gowdy State Park.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person:

Mr. Robert Skyles, Vice President, Crow Hydro, Inc., 2932 Kelley Drive, Cheyenne, WY 82001

Mr. Tore O. Arnesen, President, Arnesen and Associates, Inc., Consulting Engineers, 1330 Bellaire Street, Broomfield, CO 80020

i. Comment Date: January 2, 1986.

j. Description of Project: The proposed pumped storage project would consist of: (1) An existing 70-foot-high arch dam; (2) the existing 160-acre Granite Springs Reservoir with a storage capacity of 5,220 acre-feet at elevation 7,240 feet; (3) an intake structure; (4) a 12-foot-diameter, 8,600-foot-long penstock; (5) a powerhouse containing a pump/turbine with a capacity of 25 MW operating at a head of 230 feet; (6) and existing 90-foot-high arch dam; (7) the existing 160-acre Crystal Lake Reservoir with a storage capacity of 4,075 acre-feet at elevation 6,950 feet; and (8) a 10-mile-

long, 115-kV transmission line tying into an existing line. The average annual energy production would be 46,800 kWh.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a 36 month permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost of conducting these studies is \$50,000.

k. Purpose of Project: Project power would be sold to either a Public or Private Utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

3 a. Type of Application: Minor License.

b. Project No.: 9300-000.

c. Date Filed: July 1, 1985.

d. Applicant: James Lichoulas.

e. Name of Project: Appleton.

f. Location: On the Pawtucket Canal in Middlesex County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. James Lichoulas, Jr., 57 Mill Street, Woburn, MA 01801.

i. Comment Date: January 6, 1986.

j. Description of Project: The proposed project would utilize the existing Hamilton Canal as the intake and consist of: (1) Two existing 11-foot-wide and 180-foot-long open masonry flumes; (2) an existing 11-foot-wide and 20-foot-long steel penstock which funnels the water into; (3) an existing turbine chamber which contains two turbine-generators with an installed capacity of 346 kW; (4) two stone masonry tailraces; (5) a transmission line 1,000 feet long; and (6) appurtenant facilities. The estimated average annual energy produced by the project would be 1,309,620 kWh operating under a net hydraulic head of 13 feet. The facilities are owned by the Proprietors of Locks and Canals.

k. Purpose of Project: Project power will be sold to the Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9374-000.

c. Date Filed: August 1, 1985.

d. Applicant: Six Mile Associates.

e. Name of Project: Six Mile Lower Project.

f. Location: On Six Mile Creek in Sanpete County, UT.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Mike Graham, 484 East 300 North, Manti, UT 84642.

i. Comment Date: January 6, 1986.

j. Description of Project: The proposed project would be located on lands owned by the Gunnison Irrigation Company and would consist of: (1) An intake structure on Six Mile Creek at elevation 5,920 feet m.s.l.; (2) a pipeline/penstock, 30 inches in diameter and about 16,600 feet long; (3) a powerhouse, near Nine Mile Reservoir, with an installed capacity of 750 kW; (4) a tailrace to the reservoir; (5) a transmission line, about 2,000 feet long, connecting to an existing line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2,936,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 9398-000.

c. Date Filed: August 7, 1985.

d. Applicant: Alteras Hydro Associates.

e. Name of Project: Rattlesnake Creek Hydroelectric Project.

f. Location: On Rattlesnake Creek, near town of Alteras, within Modoc National Forest, in Modoc County, California.

g. Filed Pursuant to: Federal power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Jeff Chuett, Alteras Hydro Associates, 4210 Marks Ridge Drive, Sweet Home, OR 97386.

i. Comment Date: January 6, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Hot Springs Valley Irrigation District's 49-foot-high Big Sage Dam; (2) the existing reservoir with gross storage capacity of 77,000 acre-feet and surface elevation of 4,897 feet; (3) a 19,000-foot-long open ditch; (4) a 36-inch-diameter, 1,600-foot-long penstock; (5) a powerhouse with a total installed capacity of 1,500 kW; and (6) a 2-mile-long, 12.5-kV transmission line to connect to an existing Surprise Valley transmission line. The Applicant estimates the average annual energy generation at 4.4 million kWh.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 9440-000.

c. Date Filed: September 9, 1985.

d. Applicant: Clearwater Hydro.

e. Name of Project: Blue Mountain Dam.

f. Location: On the Petit Jean River near Danville, Yell County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Richard R. Gresham, Liaison Officer/Partner, Clearwater Hydro, P.O. Box 158, Clipper Mills, CA 95930.

i. Comment Date: January 3, 1986.

j. Description of Project: The proposed project would utilize the existing U.S. Corps of Engineers' Blue Mountain Dam and reservoir, and would consist of: (1) A proposed 13-foot diameter penstock approximately 1,100 feet long; (2) a new concrete powerhouse (possibly underground) approximately 50 feet x 80 feet and 15 feet high, housing one Kaplan turbine/generator with a capacity of 1600 kW; (3) a proposed tailrace 100 feet long, 17 feet wide, and 8.5 feet deep; (4) a proposed 110-kV transmission line approximately 1.5 miles long; and (5) appurtenant facilities. The applicant estimates that the average annual energy generation would be approximately 5.2 GWh. The project power will be sold to a local utility, nearby public institutions or industrial users.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

7 a. Type of Application: Preliminary Permit.

b. Project No.: P-9453-000.

c. Date Filed: September 13, 1985.

d. Applicant: Joe A. Brady.

e. Name of Project: Beaver Dam Creek.

f. Location: On Beaver Dam Creek Near Elberton, Elbert County, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Joe A. Brady, 3601 June Ivey Road, Bethlehem, GA 30620.

i. Comment Date: January 6, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing dam approximately 235 feet long and 25 feet high of stone-masonry construction; (2) an existing one and one-half acre reservoir at an elevation of 712 feet m.s.l. having negligible storage capacity; (3) an existing brick powerhouse, immediately adjacent to the dam, approximately 20 x 30 feet housing 2 proposed turbines and generators (250 kW and 150 kW) for a total generating capacity of 400 kW; (4) a proposed 24-kV transmission line approximately 1000 feet long; and (5) appurtenant facilities. The applicant estimates that the average annual energy generation would be 2,190 MWh. The applicant proposes to sell all project power to a local utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 9485-000.

c. Date Filed: September 26, 1985.

d. Applicant: Jerusalem Creek Associates.

e. Name of Project: Jerusalem Creek Hydroelectric Project.

f. Location: On Jerusalem Creek, near town of Ono, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Louis Rosenman, Jerusalem Creek Associates, 1350 New York Avenue, #600, Washington, D.C. 20005.

i. Comment Date: January 2, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 40-foot-long existing diversion structure at elevation 1,900 feet; (2) a 2.3-mile-long existing irrigation ditch; (3) a 2-foot-diameter, 1,650-foot-long steel penstock; (4) a powerhouse containing one generating unit with a rated capacity of 900 kW operating under a head of 500 feet; and (5) a 50-foot-long, 12.5-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant's estimated average annual energy generation of 6.3 GWh will be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9528-000.

c. Date Filed: October 7, 1985.

d. Applicant: Frontier Land and Power.

e. Name of Project: Mill Creek.

f. Location: On Mill Creek, in Section 22, T25N A7E MDB&M, near Quincy, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Bruce McDowell, P.O. Box 131, Taylorsville, CA 95983, (916) 284-7532.

i. Comment Date: January 6, 1986.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 30-foot-long concrete diversion structure across Mill Creek at elevation 2,860 feet msl; (2) an 18-inch-diameter, 4,100-foot-long penstock; (3) a 30-foot-square concrete powerhouse, located adjacent to Mill Creek at elevation 2,460 feet msl, containing a single impulse turbine-generator unit with a rated capacity of 300 kW and producing an estimated average annual generation of 1,183 GWh; (4) a concrete tailrace; and, (5) a 50-foot-long, 12-kV transmission line interconnecting the project to an

existing Pacific Gas and Electric Company (PG&E) line. Applicant intends to sell project power to PG&E. The project would occupy Plumas National Forest lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development.

Applicant estimates that the cost of the studies under permit would be \$20,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 9529-000.

c. Date Filed: October 7, 1985.

d. Applicant: Frontier Land and Power.

e. Name of Project: Swamp Creek.

f. Location: On Swamp Creek, in Sections 1, 2 and 3, T23N R5E MDB&M, near Paradise, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Bruce McDowell, P.O. Box 131, Taylorsville, CA 95983.

i. Comment Date: January 6, 1986.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high, 20-foot-long concrete diversion structure across Swamp Creek at elevation 3,840 feet msl; (2) an 12-inch-diameter, 6,000-foot-long penstock; (3) a 20-foot-square concrete powerhouse, located adjacent to Swamp Creek at elevation 1,760 feet msl, containing a single impulse turbine-generator unit with a rated capacity of 400 kW and producing an estimated average annual generation of 1,577 GWh; (4) a concrete tailrace; and, (5) a 1,500-foot-long, 12-kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) line. Applicant intends to sell project power to PG&E. The project would occupy Plumas National Forest lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development.

Applicant estimates that the cost of the studies under permit would be \$20,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

11 a. Type of Application: Major License.

b. Project No.: 3407-000.

c. Date Filed: July 24, 1984.

d. Applicant: Cook Electric, Inc.

e. Name of Project: Magic Dam.

f. Location: At the Big Wood Canal Company's Magic Dam, effecting Bureau of Reclamation land, on Big Wood River in Blaine County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Warren P. Chapman, Cook Electric, Inc., P.O. Box 1071, 2356 Beryl Avenue, Twin Falls, ID 83301.

i. Comment Date: January 3, 1986.

j. Description of Project: The existing project facilities at the site consist of: (1) A 128-foot-high, 3,100-foot-long earth fill dam; (2) a 400-foot-long spillway; (3) a 36.5-foot-high outlet tower; (4) a 620-foot-long, 132-inch-diameter outlet conduit; (5) a bifurcation; (6) 2 emergency gates and 2 outlet valves in a valvehouse; and (7) a 3740-acre reservoir with a capacity of 191,500 acre-feet at a normal maximum surface elevation of 4,935 feet. In addition the project would consist of the following proposed facilities: (1) a 600-foot-long additional spillway; (2) a new bifurcation, approximately 40-feet upstream of the existing bifurcation; (3) a 170-foot-long, 132-inch-diameter penstock; (4) a powerhouse containing 3 generating units with a combined capacity of 9.0 MW and an average annual generation of 27,738 MWh; and (5) a 2.8-mile-long transmission line which would connect to existing 46-kV Idaho Power Lines. The estimated cost of the project is \$4,615,782.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B and C.

12 a. Type of Application: Minor License.

b. Project No.: 4627-005.

c. Date Filed: October 26, 1984.

d. Applicant: Albert R. Hunt and Betty F. Hunt.

e. Name of Project: Baker Creek.

f. Location: On Baker Creek in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. David G. DeMera, P.O. Box 628, Murphys, CA 95247.

i. Comment Date: January 6, 1986.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 45-foot-long diversion dam at elevation 2,116 feet; (2) a 30-inch-diameter, 5,400-foot-long penstock; (3) a powerhouse containing a single 1,500-kW generating unit, operating under a head of 916 feet; and (4) a 12.5-kV, 17,500-foot-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line. The estimated 5.7 million kWh generated annually would be sold to PG&E. No recreational facilities are proposed by the Applicant.

k. This application has been accepted for filing as of June 20, 1983, the submittal date of the Applicant's originally accepted exemption application, pursuant to Snowbird, Ltd., 28 FERC ¶61,062, issued July 18, 1984.

l. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

m. This notice also consists of the following standard paragraphs: B, C, and D1.

13 a. Type of Application: Minor License.

b. Project No.: 6628-002.

c. Date Filed: November 13, 1984.

d. Applicant: Michael Cosgrove.

e. Name of Project: Fremont.

f. Location: In Umatilla National Forest, on Granite and Lake Creeks in Grant County, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Michael Cosgrove, Energy Planning Associates, 3182 SE Timberlake Drive, Hillsboro, OR 97123.

i. Comment Date: January 13, 1986.

j. Description of Project: The project would consist of: (1) A 4-foot high log diversion dam on Lake Creek at elevation 6000 feet; (2) an intake structure on Lake Creek at elevation 6000 feet; (3) a pipeline consisting of 24,000 feet of 25½-inch-diameter wood stave pipe, 2,700 feet of 24-inch-diameter steel pipe and 3,200 Feet of 18-inch-diameter iron penstock; (4) a powerhouse containing 2 generating units with a combined capacity of 1,100 kW and an average annual generation of 4,764 MWh. The plant would operate in a run-of-river mode and the construction cost would be \$1,500,000.

k. Purpose of Project: The project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

14a. Type of Application: Major License (Under 5MW).

b. Project No.: 7120-004.

c. Date Filed: November 15, 1985.

d. Applicant: Stewart Ranches, Inc.

e. Name of Project: Kekawaka Creek.

f. Location: On Kekawaka Creek, a tributary to the Eel River, near Alderpoint, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person:

Mr. Calvin C. Stewart, Stewart Ranches, Inc., Fort Seward Route, Garberville, CA 95440, 707-Zenia toll 6001.

Mr. Chad Roberts, Oscar Larson & Assoc., P.O. Box 3806, Eureka, CA 95501, 707-445-2043.

i. Comment Date: January 13, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 6-foot-high, 60-foot-long concrete diversion weir located across Kekawaka Creek, approximately 3 miles upstream from its confluence with the Eel River, at elevation 1,530 feet msl; (2) a 36-inch-diameter, 18,000-foot-long steel pipeline/penstock; (3) a concrete powerhouse located adjacent to Kekawaka Creek, approximately 2,000 feet upstream from its confluence with the Eel River, at elevation 410 feet msl, containing single impulse turbine-generator unit with a rated capacity of 4,950 kW and producing an estimated average annual generation of 14.2 GWh; (4) a concrete tailrace channel; (5) a switchyard; (6) an 8.3-mile-long, 60-kV transmission line crossing the Eel River and interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) line at Bell Springs in Humboldt County; and, (7) construction of an access road along the pipeline/penstock alignment and improvement of the existing access road to the diversion site. The project's transmission line would be partially located on U.S. Bureau of Land Management lands. Applicant estimates project construction cost at \$7.2 million.

k. This application has been accepted for filing as of March 3, 1983, the submittal date of the Applicant's originally accepted exemption application pursuant to *Snowbird, Ltd.*, 28 FERC ¶ 61,062 issued July 18, 1984.

l. This notice also consists of the following standard paragraph: A9, B, C and D1.

m. Development Application—Any qualified development applicant

desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application.

Submission of a timely notice of intent allows an interested person to file the competing development application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

15a. Type of Application: License (5 MW or Less).

b. Project No: 8798-001.

c. Date Filed: January 22, 1985.

d. Applicant: Rivers Electric Company, Inc.

e. Name of Project: Lower Walden.

f. Location: Walkill River in Orange County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(a).

h. Contract Person: Mr. Charles R. Pepe, President, Rivers Electric Company, Inc., 120 North Pasack Road, Spring Valley, NY 10977.

i. Comment Date: January 10, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 9-foot-high, 350-foot-long concrete gravity dam owned by the Village of Walden; (2) an existing reservoir with a surface area of 10 acres and negligible storage capacity with a water surface elevation of 282 feet msl; (3) a proposed powerhouse at the base of the dam containing a generating unit with a rated capacity of 750-kW; and (4) a proposed 50-foot-long transmission line tying into the existing New York Electric and Gas Corporation system.

k. Purpose of Project: Power generated would be sold to the New York State Electric and Gas Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

16a. Type of Application: License.

b. Project No.: 8908-000.

c. Date Filed: January 28, 1985.

d. Applicant: Washington County Board of Commissioners, Pennsylvania et al.

e. Name of Project: Maxwell Locks and Dam.

f. Location: On the Monongahela River in Washington County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Edward H. Curland, 1700 Broadway, Suite 2501, New York, NY 10019.

i. Comment Date: January 13, 1986.

j. Description of Project: The proposed project would utilize the existing U.S.

Army Corps of Engineers' Maxwell Locks and Dam, and would consist of: (1) A proposed 11-foot-diameter, 200-foot-long steel-lined penstock; (2) a proposed concrete powerhouse housing two turbine units with a total installed capacity of 10 MW; (3) a proposed 1.5-mile-long, 25kV transmission line; and (4) appurtenant facilities. Applicant estimates that the average annual generation would be 45 GWh.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the West Penn Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

17a. Type of Application: Minor License.

b. Project No.: 9167-000.

c. Date Filed: April 26, 1985.

d. Applicant: Pennsylvania

Hydroelectric Development Corporation.

e. Name of Project: New Kernsville.

f. Location: On the Schuylkill River in Berks County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Lawrence Gleeson, Pennsylvania Hydroelectric Development Corporation, 570 DeKalb Pike, P.O. Box 814, Suite 213, Continental Offices, King of Prussia, PA 19406.

i. Comment Date: January 9, 1986.

j. Description of Project: The proposed project would be run-of-the-river and would consist of: (1) The existing New Kernsville Dam, approximately 600 feet long and 17 feet high, constructed of concrete with spillway crest elevation at 383 feet m.s.l.; (2) a reservoir having minimal pondage; (3) a new power house located on a steel barge containing a turbine-generator unit having a rated capacity of 630 kW; (4) a new transmission line, approximately 6,000 feet long, connecting to existing 13.2-kV lines; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 3,200,000 kWh. New Kernsville Dam is owned by the Commonwealth of Pennsylvania.

k. Purpose of Project: Project power would be sold to the Metropolitan Edison Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C, and D1.

18a. Type of Application: Preliminary Permit.

b. Project No.: 9404-000.

c. Date Filed: August 15, 1985.

d. Applicant: James River Paper Company, Inc.

e. Name of Project: Pulsifer Rips Project.

f. Location: On the Androscoggin River in Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. David Dunham, James River Paper Company, Inc., 650 Main Street, Berlin, New Hampshire 03570.

i. Comment Date: January 10, 1986.

j. Description of Project: The proposed project would consist of: (1) A proposed 20-foot-high and 900-foot-long concrete and earth dam with a proposed spillway 20 feet above river bottom; (2) a proposed reservoir with a surface area of 30 acres and a storage capacity of negligible size; (3) a proposed 4,700-foot-long and 18-foot-diameter penstock; (4) a proposed 100-foot-long and 40-foot-wide concrete powerhouse to contain two turbine/generators with an installed capacity of 6 MW; (5) a proposed tailrace approximately 200-feet-long; (6) a new 22-kV transmission line 600-feet-long; and (7) appurtenant facilities. The estimated annual energy produced by the project would be 39,900 MWh operating under a net hydraulic head of 34 feet. The proposed facilities are owned by James River Paper Company, Inc.

k. Purpose of Project: Project power will be used by the Applicant in its manufacturing operations at the Cascade Mill, which produces paper products.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, and C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$245,000.

a. Type of Application: Major License (5MW or Less).

b. Project No.: 9004-000.

c. Date Filed: March 6, 1985.

d. Applicant: Hydro Research, Inc.

e. Name of Project: Embrey Dam Hydroelectric Project.

f. Location: On the Rappahannock River in Stafford and Spotsylvania Counties, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: J. Michael Sasser, Hydro Research, Inc., 3200 Tyre Neck Road, Portsmouth, Virginia 23703.

i. Comment Date: January 6, 1986.

j. Competing Application: Project No. 7490. Date filed: February 2, 1984.

k. Description of Project: The

Applicant would utilize an existing dam owned by the City of Fredericksburg. The proposed project would consist of: (1) A 22-foot-high, 700-foot-long, reinforced concrete dam; (2) an existing reservoir with a surface area of 60 acres and a storage capacity of 750 acre-feet at powerpool elevation of 49.1 feet m.s.l.; (3) two proposed 78-inch diameter penstocks, with lengths of 107.3 feet and 121.25 feet respectively, and one proposed 153.5-foot-long, 85-inch-diameter penstock; (4) a proposed powerhouse containing two generating units rated at 1,000 kW and one generating unit rated at 1,250 kW for a total installed capacity of 3,250 kW; (5) three proposed draft tubes, which would return the water to the river; (6) a proposed 2,000-foot-long, 34.5-kV transmission line; and (7) appurtenant facilities. The estimated average annual generation is 15,000,000 kWh.

l. Purpose of Project: Energy produced at the project would be sold to the Virginia Electric and Power Company.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

a. Type of Application: Preliminary Permit.

b. Project No.: 9467-000.

c. Date Filed: September 18, 1985.

d. Applicant: Big Sage Associates.

e. Name of Project: Big Sage Hydroelectric Project.

f. Location: On Rattlesnake Creek, near Alturas City, within Modoc National forest, in Modoc County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Mike Graham, 484 East 300 North, Manti, UT 84642.

i. Comment Date: December 26, 1985.

j. Competing Application: Project No. 9398-000, filed August 7, 1985.

k. Description of Project: The proposed project would consist of: (1) The existing Hot Springs Valley Irrigation District's (District) 49-foot-high Big Sage Dam; the existing reservoir with a gross storage capacity of 77,000 acre-feet at elevation 4,897 feet; (3) a 19,000-foot-long open ditch; (4) a 16,000-foot-long, 36-inch-diameter penstock; (5) a powerhouse with a total installed capacity of 1,500 kW operating under a head of 350 feet; and (6) a 2-mile-long transmission line to connect to the District's existing 7.2-kV transmission line. The Applicant estimates the

average annual energy generation at 4.4 million kWh.

l. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing and the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later

than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit; if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR §§ 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's

regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms

and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 2, 1985.
 Kenneth F. Plumb,
 Secretary.
 [FR Doc. 85-28911 Filed 12-4-85; 8:45 am]
 BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-2934-7]

Extension of Public Comment Period on Notice of Intent To List Chloroform as a Hazardous Air Pollutant

AGENCY: Environmental Protection Agency.

ACTION: Extension of the Public Comment Period.

SUMMARY: This notice extends the public comment period provided in EPA's Notice of Intent to List chloroform under section 112 of the Clean Air Act published on September 27, 1985 (50 FR 39628). That notice described the results of EPA's preliminary assessment of chloroform as a potentially toxic air pollutant and announced EPA's intent to add chloroform to the section 112(b)(1)(A) list based on the health and risk assessment. In response to the 60-day public comment period provided in the notice, a request was submitted for an extension of the public comment period. For this reason the public comment period has been extended for an additional 90 days and will now close on Tuesday, February 18, 1986.

FOR FURTHER INFORMATION CONTACT:
Tim Mohin at (919) 541-5645.

Dated: November 27, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-28820 Filed 12-4-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as an ocean freight forwarder pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Person knowing of any reason why the following applicant should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573.

Kamigumi U.S.A. Inc., 3858 Carson Street, Suite 205, Torrance, CA 90503

Officers:

Joichi Ida, President/Director
Tomoyuki Maeda, Vice President
Toshiko Tazaki, Vice President
Hiroaki Tsuda, Vice President/
Director

By the Federal Maritime Commission.
Dated: December 2, 1985.

Bruce A. Dombrowski,
Acting Secretary.

[FR Doc. 85-28896 Filed 12-4-85; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Circulatory System Devices Panel

Date, time, and place. December 20, 9:30 a.m., Rm. 703A-727, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing and open committee discussion, 9:30 a.m. to 12 m.; closed presentation of data and closed committee discussion, 1 p.m. to 3:30 p.m.; Keith Lusted, Center for Device and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 13, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss scientific and ethical issues related to the use of the artificial heart as a permanent organ replacement. Interested persons and organizations are invited.

Closed presentation of data. Trade secret or confidential commercial information will be presented to the committee regarding an investigational device exemption application for the permanent use of the artificial heart. The subject matter will also include

information relating to the privacy of individuals. Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. This portion of the meeting will be closed to permit discussion of this information [5 U.S.C. 552b(c)(4) and (6)].

Closed committee deliberations. The committee will discuss an investigational device exemption application for the permanent use of the artificial heart. The subject matter will include trade secret or confidential commercial information as well as information relating to the privacy of individuals. Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. This portion of the meeting will be closed to permit discussion of this information [5 U.S.C. 552b(c)(4) and (6)].

Each public advisory committee meeting listed above may have as many as four separate portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline [Subpart C of 21 CFR Part 10] concerning the policy and procedures to expedite electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairmans discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency;

consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. Ap. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: December 2, 1985.

John A. Norris,

Acting Commissioner for Food and Drugs.
[FR Doc. 85-28926 Filed 12-3-85; 10:28 am]

BILLING CODE 4150-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-20347(B), AR-033503]

Realty Action; Exchange of Public Land in Graham, Pinal, Pima and Cochise Counties, AZ, and Cancellation of State Indemnity Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange of Public Land in Graham, Pinal, Pima and Cochise Counties, Arizona, and cancellation of a State Indemnity Classification.

SUMMARY: Certain public lands within the following described townships have been determined to be suitable for disposal by exchange to the State of Arizona pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716).

SELECTED PUBLIC LANDS

Gila and Salt River Meridian, Arizona

T. 7 S., R. 19 E.
T. 10 S., R. 19 E.
T. 6 S., R. 20 E.
T. 7 S., R. 20 E.

Containing 8,432.72 acres more or less in Graham County.

Gila and Salt River Meridian, Arizona

T. 5 S., R. 15 E.
T. 8 S., R. 15 E.
T. 6 S., R. 16 E.
T. 7 S., R. 16 E.
T. 8 S., R. 16 E.
T. 6 S., R. 17 E.
T. 7 S., R. 17 E.
T. 8 S., R. 17 E.
T. 9 S., R. 17 E.
T. 8 S., R. 18 E.
T. 9 S., R. 18 E.
T. 10 S., R. 18 E.

Containing 40,076.57 acres more or less in Pinal County.

Gila and Salt River Meridian, Arizona

T. 11 S., R. 16 E.
T. 12 S., R. 17 E.
T. 12 S., R. 18 E.

Containing 1,141.90 acres more or less in Pima County.

Gila and Salt River Meridian, Arizona

T. 12 S., R. 19 E.
T. 13 S., R. 19 E.
T. 14 S., R. 19 E.
T. 15 S., R. 19 E.
T. 17 S., R. 19 E.
T. 20 S., R. 19 E.
T. 12 S., R. 20 E.
T. 13 S., R. 20 E.
T. 14 S., R. 20 E.
T. 15 S., R. 20 E.
T. 16 S., R. 20 E.
T. 17 S., R. 20 E.
T. 18 S., R. 20 E.
T. 15 S., R. 21 E.
T. 16 S., R. 21 E.
T. 15 S., R. 22 E.
T. 16 S., R. 22 E.
T. 13 S., R. 23 E.
T. 15 S., R. 23 E.
T. 21 S., R. 23 E.
T. 22 S., R. 23 E.
T. 23 S., R. 23 E.
T. 19 S., R. 24 E.

Containing 29,374.28 acres more or less in Cochise County.

The total public land selected is 79,026.05 acres more or less.

In exchange, the State of Arizona has offered lands in the following described townships to the United States.

OFFERED STATE LAND

Gila and Salt River Meridian, Arizona

T. 5 S., R. 19 E.
T. 8 S., R. 19 E.
T. 7 S., R. 19 E.
T. 11 S., R. 20 E.

Containing 15,975.02 acres more or less in Graham County.

Gila and Salt River Meridian, Arizona

T. 6 S., R. 17 E.
T. 5 S., R. 18 E.
T. 6 S., R. 18 E.
T. 7 S., R. 18 E.

Containing 38,061.10 acres more or less in Pinal County.

Gila and Salt River Meridian, Arizona

T. 12 S., R. 19 E.
T. 12 S., R. 20 E.
T. 13 S., R. 20 E.
T. 12 S., R. 21 E.
T. 13 S., R. 21 E.

Containing 20,512.24 acres more or less in Cochise County.

The total State land offered is 74,549.36 acres more or less.

The above identified non-federal lands are being acquired to enhance resource management programs and continue the land tenure adjustment program prescribed in the land use plan. The overall exchange program will block up Federal and State-owned lands and consolidate ownership and management within the areas involved. The public interests will be well-served.

The values of the lands to be exchanged are approximately equal and the acreages will be adjusted to equalize values upon completion of the final appraisal of the lands.

The patent for the public land, when issued, shall except and reserve to the United States a right-of-way for ditches or canals, six oil and gas pipelines rights-of-way for the El Paso Natural Gas Company, six electric power transmission line rights-of-way for the Bureau of Indian Affairs, three road rights-of-way for the Coronado National Forest, two electric power transmission line rights-of-way each for the Tucson Electric Power Company and the Arizona Electric Power Cooperative, Inc., eight rights-of-way for Federal Aid Highway purposes for the Arizona Department of Transportation, seven rights-of-way for railroad purposes for the Southern Pacific Railroad Company, one right-of-way each for gas pipeline purposes for the Southern Pacific Pipeline, Inc. and Southwest Gas Company, an electric power transmission line right-of-way for the Western Area Power Administration, a railroad right-of-way for the San Manuel Railroad Company and a right-of-way for roadway purposes for the Bureau of Land Management.

The public lands shall also be patented subject to all other valid existing rights and the terms and conditions of all other authorized uses.

The State lands, when conveyed to the United States, will be subject to such terms and conditions as are necessary to protect the permittees and lessees.

The permittee/lessee will be able to either continue his/her use under the existing terms of the State's authorization or may be issued a new authorization by the Bureau of Land Management.

Publication of this notice in the Federal Register will serve to cancel the State Indemnity Selection Classification AR-033503, as it pertains to the E½SW¼ sec. 19, T. 8 S., R. 17 E., dated September 11, 1974.

DATE: For a period of 45 days from date of publication in the Federal Register interested parties may submit comments to the Safford District Manager, 425 East 4th Street, Safford, Arizona 85548. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange including the land use plan supporting this exchange, the environmental considerations reviewed in making this decision to exchange and all information concerning reservations and authorized uses is available for review at the Safford District Office.

Dated: November 26, 1985.

Lester K. Rosenkrance,
District Manager.

[FR Doc. 85-28877 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-32-M

Realty Action; Sale of Public Land in Calaveras County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment Notice.

SUMMARY: In the Federal Register Notice of July 18, 1985, (FR Vol. 50, No. 138) beginning on page 29281, Serial No. CA 17466, should have also read that the lands will be conveyed subject to the valid existing rights of the following mining claims filed by Kraig Guilemin.

CAMC 129735 TS
CAMC 142845 TS
CAMC 165579 LD
CAMA 165580 LD

The conveyance will be made subject to the existing claims and the following rights:

a. Right to continue to prospect for, mine and remove locatable minerals under applicable laws;

b. Right to obtain mineral patent to both the surface and mineral estate within the mining claims if valid

discovery was made prior to the date of FLPMA patent, or:

c. Right to obtain patent to the mineral estate only if discovery is made subsequent to the FLPMA patent.

The United States of America, by this conveyance, does not intend to preclude the Grantee from challenging the validity of any mining claims located on the land conveyed.

The purchaser, by accepting patent, will hereby waive any liability against the United States in the event of subsequent title litigation.

This amendment will also serve to extend the segregation of the lands under CA 17466 for an additional 270 days beyond the segregation period of the notice of July 18, 1985.

For a period of 45 days from the first publication of this notice, interested parties may submit comments to the District Manager, Bakersfield District, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301; (805) 861-4191. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Bureau.

ADDRESS: Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

Dated: November 26, 1985.

D.K. Swickard,
Area Manager.

[FR Doc. 85-28878 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-46-M

Realty Action: Exchange of Public and Private Lands in Calaveras County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment notice.

SUMMARY: In the Federal Register Notice of June 6, 1985, (FR Vol. 50, No. 109) beginning on page 23838, it states that the exchange of public land in Calaveras County, California will be made for both the surface and mineral estates. It should also be stated that the exchange will be made subject to the valid existing rights of the following mining claims filed by Kraig Guilemin.

CAMC 129735 TS
CAMC 142845 TS
CAMC 165579 LD
CAMA 165580 LD

The conveyance will be made subject to the existing claims and the following rights:

- a. Right to continue to prospect for, mine and remove locatable minerals under applicable laws;
- b. Right to obtain mineral patent to both the surface and mineral estate within the mining claims if valid discovery was made prior to the date of FLPMA patent, or;
- c. Right to obtain patent to the mineral estate only if discovery is made subsequent to the FLPMA patent.

The United States of America, by this conveyance, does not intend to preclude the Grantee from challenging the validity of any mining claims located on the land conveyed.

The exchange proponent, by accepting patent, will hereby waive any liability against the United States in the event of subsequent title litigation.

This amendment will also serve to extend the segregation of the exchange lands from all other forms of appropriation under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The period is 270 days from publication in the Federal Register.

For a period of 45 days from the first publication of this notice, interested parties may submit comments to the District Manager, Bakersfield District, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301; (805) 861-4191. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Bureau.

ADDRESS: Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

Dated: November 28, 1985.

D.K. Swickard

Area Manager.

[FR Doc. 85-28876 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-40-M

Public Hearing Review of the Rockhouse Basin Wilderness Study Area (WSA) Recommendations (CA-010-029)

AGENCY: Bureau of Land Management, Interior.

ACTION: Public hearing of the Rockhouse Basin WSA recommendations (CA-010-029).

SUMMARY: Notice is hereby given in accordance with Pub. L. 88-577 that the U.S. Forest Service and the Bureau of Land Management will conduct a joint meeting on Thursday, January 9, 1986, from 7 p.m. to 9:30 p.m. in the Venus Room of the Bakersfield Civic Auditorium, 1001 Truxtun Avenue in Bakersfield, California. The first part of the meeting will be a briefing by the Forest Service to provide information and answers on the Sequoia National Forest Draft Environmental Impact Statement and the Proposed Land and Resource Management Plan. The second part of the meeting will be a Bureau of Land Management public hearing to accept comments on the Rockhouse Basin WSA recommendations (CA-010-029). This area is being studied by the Forest Service under joint agreement with the Bureau of Land Management.

SUPPLEMENTARY INFORMATION: The Rockhouse Basin WSA (CA-010-029) is comprised of 35,557 acres adjacent to the eastern boundary of the present USFS Domelands Wilderness Area. Ten alternatives are analyzed and portrayed in the Draft Environmental Impact Statement and the Proposed Land and Resource Management Plan. Public comments should address the suitability or nonsuitability of this area for designation as wilderness. Written comments after the hearing will be accepted until February 9, 1986.

FOR FURTHER INFORMATION CONTACT: Glenn Carpenter, Area Manager, Bureau of Land Management, Calfiente Resource Area, 520 Butte Street, Bakersfield, California 93305; (805) 861-4236.

Dated: November 27, 1985.

Rory Raschen,

Associate District Manager.

[FR Doc. 85-28896 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-40-M

[Group 813]

California; Filing of Plat of Survey

November 28, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Amador & El Dorado Counties

T. 8 N., R. 12 E.

2. This plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the survey of the subdivision of section 13, Township 8 North, Range 12 East, Mount Diablo Meridian, under Group No. 813, California, was accepted October 21, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85-28907 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-40-M

Salem District Advisory Council; Meeting

November 27, 1985.

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Salem District Advisory Council will be held Dec. 27, 1985, at 1 p.m. at the BLM District Office, 1717 Fabry Road S.E., Salem, Oregon.

Agenda for the meeting will include: 1—Grand Ronde Confederated Tribes Proposed Reservation Plan.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Salem District Office, 1717 Fabry Road S.E., Salem, Oregon, 97302, by Dec. 23, 1985. Written comments will also be received for the council's consideration. Summary minutes will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: November 28, 1985.

Joseph C. Dose,

District Manager.

[FR Doc. 85-28906 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service**Endangered Species Conservation; Notification of Availability of Environmental Assessment Regarding Trapping and Release of California Condors; Addendum To Revise Preferred Alternative**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification, Addendum.

SUMMARY: On October 28, 1985, the Service published in the Federal Register a notification of emergency exemption issuance of an amendment to permit number PRT-682928 to authorize the taking from the wild of three additional California condors (*Gymnogyps californianus*). In addition, it was noted that the Service had completed an Environmental Assessment (EA), which covered the proposed action, and a Finding of No Significant Impact (FONSI). The EA and FONSI have been provided to persons and agencies requesting copies. This notice advise there is an Addendum to the EA indicating a revised preferred alternative as the proposed action. The Addendum to the EA is also available to those persons requesting it.

DATE: Effective on December 5, 1985.

FOR FURTHER INFORMATION CONTACT: Jan E. Riffe, Chief, Division of Wildlife Research, Fish and Wildlife Service, Washington, DC 20240 (202/653-8762).

SUPPLEMENTARY INFORMATION: On October 28, 1985, the Service published in the Federal Register (50 FR 43612) a notification that the Director, Patuxent Wildlife Research Center, has applied for an amendment to permit number PRT-682928 to authorize the taking from the wild of three additional California condors exclusive of the "Santa Barbara pair" or "IC-9" for the enhancement of propagation and survival; the letter also requested an emergency waiver of the 30-day public comment period required by section 10(c) of the Endanger Species Act. PRT-682928 was amended to authorize the take of three wild, adult California condors and the 30-day public comment period was waived on an emergency basis. The October 28, 1985, notification additionally advised that an Environmental Assessment (EA) was available that analyzed the effects of the action in accordance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969. The preferred action of the EA is to "Immediately remove one adult female and two adult male condors (excluding the Santa Barbara pair and IC-9) from the wild population and release three immature female condors

(equipped with radio transmitters) into the wild from the captive flock during 1986. (The Santa Barbara pair was selected for retention in the wild because it is more likely to breed in 1986 if left undisturbed and IC-9 is represented in captivity by five siblings)." Subsequently, it was determined that the EA proposed action was not practicable in light of conditions found during an inspection of the captive propagation facilities. Thus, an Addendum to the EA has been prepared and approved that revises the preferred alternative to "Immediately remove one adult female and two adult male condors from the wild population and proceed with plans to make a decision to release the three immature birds most suitable for release in April 1986. A release in April is contingent upon availability of at least three suitable immature birds. (The Santa Barbara pair was selected for retention in the wild because it is more likely to breed in 1986 if left undisturbed and IC-9 is represented in captivity by five siblings)." As stated in the Addendum, the revised preferred alternative differs from the original EA in that: (1) The pool of birds being considered for release has been expanded to include all potentially suitable immature birds and (2) a release in April 1986 will not occur in the absence of three suitable immature birds.

Dated: November 28, 1985.

Ronald E. Lambertson,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FIR Doc. 85-28884 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service**Outer Continental Shelf; Development Operations Coordination Document; Amoco Production Co.**

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5000, Block 622, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on November 27, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert, Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53085). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 29, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FIR Doc. 85-28880 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 40 Federal Unit Agreement No. 14-08-001-3847, submitted on November 25, 1985, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Main Pass Block 40 Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at

the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 27, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-27949 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; TXP Operating Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that TXP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 3757 and 3949, Blocks A-551 and A-552, respectively, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Ingleside, Texas.

DATE: The subject DOCD was deemed submitted on November 27, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 145, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production;

Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 29, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-28881 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30744]

NRUC Corp. and Peninsula Terminal Co.; Control Exemption; St. Lawrence Railroad; Exemption

NRUC Corporation (NRUC) and Peninsula Terminal Company (PENT) filed a joint notice of exemption for the transfer of control and operation of the St. Lawrence Railroad (SLR) from NRUC to PENT. SLR is a class III shortline railroad, a division of NRUC, that operates between Ogdensburg, Norwood, and Waddington, NY. NRUC intends to make SLR a division of PENT, a wholly-owned corporate subsidiary of NRUC. PENT presently operates a class III shortline railroad at Portland, OR. SLR will become a division of PENT rather than a division of NRUC. The transaction became effective November 12, 1985.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees affected by the merger shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979)

Dated: November 21, 1985.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

James H. Bayne,
Secretary.

[FR Doc. 85-28894 Filed 12-4-85; 8:45 am]
BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW, in Washington, DC on January 7, 1986 beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 5 U.S.C. 1242(a)(1)(B) and to review the November 1985 Joint Board examination in order to make recommendations relative thereto, including the minimum acceptable pass score. In addition, possible topics for inclusion on the syllabus for the Joint Board's examinations will be discussed.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the November 1985 Joint Board examination fall within the exceptions to the open meeting requirement set forth in Title 5 U.S.C. 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the Joint Board examination syllabus will commence at 1:30 p.m. and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be

limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than December 24, 1985 to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Dated: December 2, 1985.

Leslie S. Shapiro,
Advisory Committee Management Officer,
Joint Board for the Enrollment of Actuaries.

[FR Doc. 85-26885 Filed 12-4-85; 8:45 am]

BILLING CODE 4610-25-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84-31]

John W. Fitzhugh, M.D.; Revocation of Registration

On July 25, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to John W. Fitzhugh, M.D. (Respondent) of 5408 Illinois Avenue, NW., Washington, D.C. 20011 an Order to Show Cause proposing to revoke his DEA Certificate of Registration, AF2436461. The proposed action was predicated upon the Respondent's controlled substance-related felony conviction on January 19, 1984, in the United States District Court for the District of Columbia. Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young.

During the prehearing proceedings, Respondent's counsel raised an issue regarding the effect on the administrative proceedings of a plea agreement entered into between the United States Attorney's Office in Washington, D.C. and the Respondent in connection with Respondent's criminal conviction involving the illegal distribution of controlled substances. Respondent agreed to plead guilty and to voluntarily surrender his DEA Registration as to Schedule II substances. Judge Young allowed Respondent to have until February 8, 1985, to file a brief or memorandum in support of his position on this issue. By letter dated February 7, 1985, Respondent requested a ten day extension of the time for filing this brief

or memorandum. The Administrative Law Judge granted this request, however, Respondent failed to file the brief or memorandum. In a memorandum to Counsel dated March 13, 1985, Judge Young stated that since no brief or memorandum had been filed regarding the effect of the plea agreement, he considered the issue to have been abandoned.

The administrative hearing was scheduled for May 7, 1985, in Washington, D.C. before Judge Young. On or about April 25, 1985, Respondent filed a Motion for Enforcement of the Plea Agreement in the United States District Court for the District of Columbia. The motion asked the District Judge, who had sentenced Respondent in 1984 in the criminal proceeding, to order DEA to dismiss the administrative proceeding. On the morning of the hearing, Respondent's counsel telephoned the Administrative Law Judge's office to inform Judge Young that he was going before the District Judge that morning to request an order granting his motion based on the plea agreement.

The Administrative Law Judge convened the hearing as scheduled. Neither Respondent nor Respondent's counsel were present. Judge Young postponed the start of the administrative hearing until being advised that the District Judge had declined to rule on the plea agreement motion and had requested that the administrative proceeding be delayed pending his further consideration and ruling on the motion before him in the criminal case. Judge Young elected to proceed with the administrative hearing since he was aware that it would be many months before the administrative proceeding could be concluded thus providing ample time for the District Judge to consider and rule on the motion before him.

The hearing commenced without the presence of Respondent or his counsel. After being advised by Respondent's counsel that he was on his way to the hearing, Judge Young again recessed the hearing. The hearing resumed two hours after the scheduled starting time, with Respondent's counsel and Respondent present.

On June 12, 1985, the District Judge entered an order denying Respondent's Motion For Enforcement of Plea Agreement and further ordering that DEA may proceed with whatever administrative proceedings and actions it deems appropriate.

On September 3, 1985, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of

law and decision. Respondent timely filed exceptions to the Administrative Law Judge's opinion and recommended ruling pursuant to 21 CFR 1316.66. Government counsel filed a response to Respondent's exceptions. On October 18, 1985, the Administrative Law Judge transmitted the record of these proceedings, including Respondent's exceptions and Government's response, to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that a woman was arrested by the Washington, D.C. Metropolitan Police Department in January, 1983. During a post-arrest interview, she told investigators that she had received prescriptions from Respondent for 50 Dilaudid 4 mg. tablets. She paid Respondent approximately \$450 for each prescription. She had no medical problem calling for Dilaudid and had not sought any medical treatment from Respondent. Dilaudid is a Schedule II narcotic controlled substance containing hydromorphone.

The woman began cooperating with the D.C. Metropolitan Police Department. On March 8, 1983, she telephoned Respondent's office and made an appointment with Respondent for the following day. On March 9, 1983, the woman was fitted with a tape recording device. She then went to Respondent's office. During her visit she gave Respondent \$1,000. In return, Respondent gave her prescriptions totaling 100 Dilaudid 4 mg. tablets. One prescription was written in the woman's name. The other was in a different name, provided by the woman. Respondent also provided the woman with a prescription for 50 valium 10 mg. tablets. During this visit there was no demonstration of any legitimate medical treatment or need for the controlled substances prescribed by Respondent.

On March 15, 1983, the woman telephoned Respondent's office and arranged to meet him later that day. She was again fitted with a tape recording device. During this visit, she paid Respondent \$500 for a prescription for 50 tablets of Dilaudid 4 mg. which Respondent wrote in a name which was not the name by which Respondent knew the woman. The street price of Dilaudid in the District of Columbia is approximately \$40-\$45 a tablet.

On May 10, 1983, a D.C. Metropolitan Police Investigator interviewed a female

who had complained that her son was abusing Dexedrine which he obtained from Respondent. Dexedrine is a Schedule II stimulant controlled substance containing dextroamphetamine sulfate. She told the investigator that she had telephoned Respondent several times and written him a letter, asking him to stop prescribing amphetamines for her son. She received no response from Dr. Fitzhugh. Thirty prescriptions written by Respondent for the son, totaling over 1000 Dexedrine tablets, were collected from one Maryland pharmacy. All of these prescriptions had been written during the period January 1982 through September 1982.

On September 16, 1983, a criminal information was filed against Respondent in the United States District Court for the District of Columbia charging Respondent with unlawful distribution of a quantity of Dilaudid in violation of 21 U.S.C. 841(a)(1). On October 4, 1983, Respondent entered into a plea agreement in which he agreed to voluntarily surrender his DEA Registration as to Schedule II substances at the time of his sentencing.

On January 18, 1984, Respondent was sentenced in the United States District Court for the District of Columbia to fifteen years imprisonment, plus a special parole term of three years. All but six months of the sentence was suspended, the six months to be served at Hope Village Correctional Center in Washington, D.C. Respondent was ordered to perform two hundred hours of community service and pay a \$25,000 fine within 30 days. As of May 7, 1985 (the day of the hearing), Respondent had completed 75 hours of community service. He had not paid the fine which he was ordered to pay. The conviction is a felony relating to controlled substances. Therefore, there is a lawful basis for the revocation of Dr. Fitzhugh's DEA Certificate of Registration. 21 U.S.C. 824(a)(2).

Respondent contends that DEA cannot revoke his registration because of the plea agreement entered into in the criminal case. On June 12, 1985, the District Judge ruled that the plea agreement does not bar DEA administrative action.

The Administrative Law Judge found no reason to disagree with the conclusion of the District Judge. Judge Young noted that the plea agreement and the voluntary surrender of Respondent's Schedule II privileges were in the context of a criminal proceeding. Their purpose was punishment for past misdeeds. This administrative decision looks prospectively. Its purpose is the future

exercise of effective control over dangerous drugs. The Administrator is charged with protecting the public health and safety from the illicit diversion of controlled substances. 21 U.S.C. 824(c) expressly provides that, "such proceedings [for the revocation or suspension of a registration] shall be independent of, and not in lieu of, criminal prosecutions or other proceedings." In *Noell v. Bensinger*, 586 F.2d 554, 559 (5th Cir. 1978), the court said that, "[t]he plea bargain in the criminal proceeding presented no obstacle to the Administrator's action."

Judge Young concluded in his opinion that the evidence clearly shows that Dr. Fitzhugh, in a cold and calculating manner, sold prescriptions solely for profit. There was no legitimate medical need for the prescriptions for controlled substances that Respondent sold to the woman cooperating with the police. The evidence indicates that Respondent criminally wrote prescriptions for others. He refused to heed the plea of the mother of one of the recipients of prescriptions. As Judge Young noted, no evidence was introduced to indicate that Dr. Fitzhugh realizes the wrongfulness of his actions, that he regrets them, or that he will refrain from such conduct in the future. The Administrative Law Judge recommended that Respondent's registration be revoked.

The Administrator of the Drug Enforcement Administration adopts the recommended ruling, findings of fact and conclusions of law of the Administrative Law Judge in their entirety. The Administrator concludes that the continued registration of Dr. Fitzhugh would pose a serious risk to the public health, welfare and safety.

Having concluded that there is a lawful basis for the revocation of Respondent's registration and having further concluded that under the facts and circumstances presented in this case the registration should be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AF2436481, previously issued to John W. Fitzhugh, M.D., be revoked effective January 6, 1986. Any outstanding applications for renewal of that registration are hereby denied.

Dated: November 26, 1985.

John C. Lawn,
Administrator.

[FRC Doc. 85-28904 Filed 12-4-85; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50-528]

Arizona Public Service Co. et al. (Palo Verde Nuclear Generating Station, Unit 1); Exemption

I

On July 11, 1974, the Arizona Public Service Company, the Salt River Project Agricultural Improvement and Power District, the El Paso Electric Company, the Public Service Company of New Mexico, and the Arizona Electric Power Cooperative, Incorporated (the applicants) tendered an application for licenses to construct the Palo Verde Nuclear Generating Station, Units 1, 2 and 3 (Palo Verde or the facility) with the Atomic Energy Commission (currently the Nuclear Regulatory Commission or the Commission). Following a public hearing before the Atomic Safety and Licensing Board, the Commission issued Construction Permit Nos. CPPR-141, CPPR-142 and CPPR-143 on May 25, 1976, permitting the construction of Units 1, 2 and 3, respectively. Each unit of the facility is a pressurized water reactor, containing a Combustion Engineering Company (CE) nuclear steam supply system which is a standard plant design referred to as CESSAR System 80 (CESSAR). The facility is located at the licensees' site in Maricopa County, Arizona.

On April 1978, the construction permits for Palo Verde, Units 1, 2 and 3 were amended to delete the Arizona Electric Power Cooperative, Incorporated, as a co-owner to the facility. On October 1, 1979, an application for operating licenses was tendered for each unit of the facility. On April 28, 1982, the construction permits for the three units were further amended to include the Southern California Public Power Authority and the Los Angeles Department of Water and Power as co-owners to the facility (the Los Angeles Department of Water and Power will actually become a co-owner after Palo Verde Unit 1 achieves commercial operation). On December 31, 1984 and June 1, 1985, Palo Verde Unit 1 was issued a low power license and a full power license, respectively. Palo Verde Units 2 and 3 are currently in the licensing review process.

II

Facility Operating License No. NPF-41, issued for Palo Verde Unit 1 provides, in pertinent parts, that the facility is subject to all rules, regulations and Orders of the Commission. This

includes General Design Criterion (GDC) 4 of Appendix A to 10 CFR 50. GDC 4 requires that structures, systems and components important to safety shall be designed to accommodate the effects of, and to be compatible with, the environmental conditions associated with the normal operation, maintenance, testing and postulated accidents, including loss-of-coolant accidents. These structures, systems and components shall be appropriately protected against dynamic effects, including the effects of missiles, pipe whipping, discharging fluids that may result from equipment failures, and from events and conditions outside the nuclear power unit. The protective measures include physical isolation from postulated pipe rupture locations, if feasible, or the installation of pipe whip restraints, jet impingement shields or compartments.

By letter dated June 7, 1984 (Reference 1) the licensees requested a partial exemption from GDC 4 for each unit of Palo Verde. By letters dated November 13 and 15, 1985 (References 2 and 3) the licensees submitted a request for a partial scheduled exemption from the provisions of GDC 4 for Palo Verde Unit 1 for a period ending with the completion of the second refueling outage. Specifically, the licensees' request is to eliminate the need (1) to postulate circumferential and longitudinal pipe breaks in the RCS primary loop (hot leg, cold leg, and cross-over leg piping) specified in Section 3.6 of the Palo Verde Final Safety Analysis Report; (2) for associated pipe whip restraints in the RCS primary loop and the requirement to design for the structural effects associated with RCS primary loop pipe beaks, including jet impingement; and (3) to consider dynamic effects and loading conditions associated with these previously postulated primary loop pipe beaks. In support of the application, the licensees reference two documents: a report submitted by CE by letter dated June 14, 1983 (Reference 4) and an amendment to the CE report submitted by letter dated December 23, 1983 (Reference 5). The technical information contained in these two documents together with the value-impact analysis submitted by letter dated October 3, 1984 (Reference 6) provided a comprehensive justification for requesting a partial exemption from the requirements of GDC 4.

The CE submittals (References 4 and 5) contain the technical bases to demonstrate that, for CESSAR plants, guillotine type failures of the RCS main loop piping need not be considered in

the design basis and hence, pipe whip restraints and jet impingement shields for the RCS piping are not required. The submittals were made to support requests, by applicants with a CESSAR plant, for an exemption to GDC 4 as it relates to all postulated large pipe beaks specified in Section 3.6 of CESSAR-F, pipe whip restraints and jet impingement shields on the RCS primary piping and associated dynamic effects. No other changes in design requirements are addressed within the scope of the reference reports; e.g., no changes to the definition of a LOCA nor its relationship to the regulations addressing design requirements of ECCS (10 CFR 50.46), containment (GDC 16, 50), other engineered safety features and the conditions for environmental qualification of equipment (10 CFR 50.49). The licensees' exemption request (References 2 and 3) also states that no other changes in design requirements are being requested.

The technical bases provided by CE for the exemption request (References 4 and 5) relied on advanced fracture mechanics technology. These advanced fracture mechanics techniques, which make possible the acceptance of the technical bases, deal with relative small flaws in piping components (either postulated or real) and examine their behavior under various pipe loads. The objective is to demonstrate by deterministic analyses that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before the flaws can grow to critical or unstable sizes which could lead to large break areas such as the double-ended guillotine break (DEGB) or its equivalent. The concept underlying such analyses is referred to as "leak-before-break" (LBB). There is no implication that piping failures cannot occur, but rather that improved knowledge of the failure modes of piping systems and the application of appropriate remedial measures, if indicated, can reduce the probability of catastrophic failure to insignificant values.

Advanced fracture mechanics technology was also applied to Westinghouse topical reports (References 7, 8, and 9) submitted to the staff on behalf of the licensees belonging to the Owners Group for Unresolved Safety Issue (USI) A-2, "Asymmetric Blowdown Loads on PWR Primary Systems". Although the topical reports were intended to resolve the issue of asymmetric blowdown loads that resulted from a limited number of discrete break locations, the technology advanced in these topical reports

demonstrated that the probability of breaks occurring in the primary coolant system main loop piping is sufficiently low such that these breaks need not be considered as a design basis for requiring installation of pipe whip restraints or jet impingement shields. The staff's evaluation of these Westinghouse reports is attached as Enclosure 1 to Reference 10.

Probabilistic fracture mechanics studies conducted by the Lawrence Livermore National Laboratories (LLNL) on both Westinghouse and Combustion Engineering nuclear steam supply system main loop piping (Reference 11) confirm that both the probability of leakage (e.g., undetected flaw growth through the pipe wall by fatigue) and the probability of a DEGB are very low. The results given in Reference 9 are that the best-estimate leak probabilities for Westinghouse nuclear steam supply system main loop piping range from 1.2×10^{-8} to 1.5×10^{-7} per plant year and the best estimate DEGB probabilities range from 1×10^{-12} to 7×10^{-12} per plant year. Similarly, the best-estimate leak probabilities for Combustion Engineering nuclear steam supply system main loop piping range from 1×10^{-8} to 3×10^{-8} per plant year, and the best-estimate DEGB probabilities range from 5×10^{-14} to 5×10^{-13} per plant year. These results do not affect core melt probabilities in any significant way.

During the past few years it has also become apparent that the requirement for installation of large, massive pipe whip restraints and jet impingement shields is not necessarily the most cost effective way to achieve the desired level of safety, as indicated in Enclosure 2 to Reference 10. Even for new plants, these devices tend to restrict access for future inservice inspection of piping; or if they are removed and reinstalled for inspection, there is a potential risk of damaging the piping and other safety-related components in this process. If installed in operating plants, high occupational radiation exposure (ORE) would be incurred while public risk reduction would be very low. Removal and reinstallation for inservice inspection also entail significant ORE over the life of a plant.

IV

The primary coolant system of CESSAR facilities, as described in References 4 and 5, has two (2) main loops each comprising a 42-inch diameter hot leg and two (2) 30-inch diameter crossover legs and cold legs. The materials in the primary loop piping are SA 516 Gr 70 (pipes) and SA 508 CL

1, 2 or 3 (safe ends and nozzles). The piping system is cladded on the inside surface with stainless steel. In its review of References 4 and 5, the staff evaluated the CE analyses with regard to:

- The location of maximum stresses in the piping, associated with the combined loads for normal operation and the SSE;
- Potential cracking mechanism;
- Size of throughwall cracks that would leak a detectable amount under normal loads and pressure;
- Stability of a "leakage-size-crack" under normal plus SSE loads and the expected margin in terms of load;
- Margin based on crack size; and
- The fracture toughness properties of carbon steel piping and weld material

The NRC staff's criteria for evaluation of the above parameters are delineated in Enclosure 1 to Reference 10, Section 4.1, "NRC Evaluation Criteria," and are as follows:

(1) The loading conditions should include the static forces and moments (pressure, deadweight and thermal expansion) due to normal operation, and the forces and moments associated with the safe shutdown earthquake (SSE). These forces and moments should be located where the highest stresses, coincident with the poorest material properties, are induced for base materials, weldments and safe-ends.

(2) For the piping run/systems under evaluation, all pertinent information which demonstrates that degradation of failure of the piping resulting from stress corrosion cracking, fatigue or water hammer is not likely, should be provided. Relevant operating history should be cited, which includes systems operational procedures; system or component modification; water chemistry parameters, limits and controls; resistance of material to various forms of stress corrosion, and performance under cyclic loadings.

(3) A throughwall crack should be postulated at the highest stressed locations determined from (1) above. The size of the crack should be large enough so that leakage is assured of detection with adequate margin using the minimum installed leak detection capability when the pipe is subjected to normal operational loads.

(4) It should be demonstrated that the postulated leakage-size crack is stable under normal plus SSE loads for long periods of time; that is, crack growth, if any, is minimal during an earthquake. The margin, in terms of applied loads, should be determined by a crack stability analysis; i.e., that the leakage-size crack will not experience unstable

crack growth even if larger loads (larger than design loads) are applied. This analysis should demonstrate that crack growth is stable and that the final crack size is limited, such that a double-ended pipe break will not occur.

(5) The crack size margin should be determined by comparing the leakage-size crack to critical-size cracks. Under normal plus SSE loads, it should be demonstrated that there is adequate margin between the leakage-size crack and the critical-size crack to account for the uncertainties inherent in the analyses and in leakage detection capability. A limit-load analysis may suffice for this purpose; however, an elastic-plastic fracture mechanics (tearing instability) analysis is preferable.

(6) The materials data provided should include types of materials and materials specifications used for base metal, weldments and safe-ends, the materials properties including the J-R curve used in the analyses, and long-term effects such as thermal aging and other limitations to valid data (e.g.,] maximum, maximum crack growth).

V

The staff's evaluation of the analysis contained in the CE submittals (References 4 and 5), presented in Reference 12. Based on that evaluation, the staff finds that CR has presented an acceptable technical justification, addressing the above criteria, for not installing protective devices to deal with the dynamic effects of large pipe ruptures in the main loop primary coolant system piping of CESSAR facilities. As stated in Reference 12, this finding is based on the following observations:

(1) The loads associated with the highest stressed locations in the main loop primary system piping were provided and are within Code allowables.

(2) For CE plants, there is no history of cracking failure in reactor primary coolant system loop piping. CE reactor coolant system primary loops have an operating history which demonstrates their inherent stability. This includes a low susceptibility to cracking failure from the effects of corrosion (e.g., intergranular stress corrosion cracking), water hammer, or fatigue (low and high cycle). This operating history includes several plants with many years of operation.

(3) The results of the leak rate calculations performed for CESSAR used initial postulated throughwall flaws that are equivalent in size to that in Enclosure 1 to Reference 10. CESSAR facilities are expected to have an RCS

pressure boundary leak detection system which is consistent with the guidelines of Regulatory Guide 1.45 so that they can detect leakage of one (1) gpm in one hour. This will be verified during the case-by-case review of each applicant's submittal. The calculated leak rate through the postulated flaw is large relative to the staff's required sensitivity of plant leak detection systems. The margin is at least a factor of ten (10) on leakage.

(4) The expected margin in terms of load for the leakage-size crack under normal plus SSE loads is greater than a factor of three (3) when compared to the limit load. In addition, the staff found a significant margin in terms of loads larger than normal plus SSE loads.

(5) The margin between the leakage-size crack and the critical-size crack was calculated. Again, the results demonstrated that a crack size margin of at least a factor of three (3) exists. In view of the analytical results presented in References 4 and 5 and the staff's evaluation findings related above, the staff concluded that the probability or likelihood of large pipe breaks occurring in the primary coolant system loop of a CESSAR facility is sufficiently low such that protective devices associated with postulated pipe breaks in the CESSAR primary coolant system need not be installed.

The staff evaluation (Reference 12) stated that applicants or licensees with CESSAR facilities who intend to use the "leak-before-break" approach to eliminate the need to install protective devices associated with postulated pipe breaks in their primary coolant systems must confirm that their as-built facility design substantially agrees with the design described in References 4 and 5; specifically, the piping loads should be no greater than those cited in the references. Also, applicants or licensees must confirm that their risk detection systems meet the staff's requirements in (3) above.

Reference 6 states that the leak-before-break analysis performed by CE (References 4 and 5) was performed on the Palo Verde design (as the prototypical CESSAR plant) using pertinent Palo Verde parameters. Hence, the CE analysis envelopes the Palo Verde design with respect to such parameter as loads, material properties, postulated crack leakage and size, seismicity, and leak detection system capabilities. In addition, the leak detection system for Palo Verde is consistent with the guidelines of Regulatory Guide 1.45 so that it can detect leakage of one (1) gpm in one hour. Therefore, the Palo Verde design

substantially agrees with the design described in References 4 and 5.

Based on the above evaluation, the staff concludes that the probability or likelihood of large pipe breaks occurring in the RCS main loop piping for Palo Verde, Unit 1 is sufficiently low such that pipe breaks in the RCS main loop piping and their associated dynamic loads, as indicated in the licensees' November 13 and 15, 1985, letters, need not be considered as a design basis for requiring pipe whip restraints and jet impingement shields for this piping. The Commission currently has in progress a rulemaking regarding the issue of "leak-before-break". In order to provide the Commission with an opportunity to consider the long term aspects of the NRC staff's recent acceptance criteria of the "leak-before-break" approach, this exemption is limited to a period extending until the completion of the second refueling outage of Palo Verde Unit 1, pending the outcome of Commission rulemaking on this issue. Eliminating the need to consider these dynamic loads for this particular application does not in any way affect any other design bases for the plant and, in particular, for the containment, the emergency core cooling system, or the environmental qualification for Palo Verde.

The staff also reviewed the value-impact analysis, provided by the applicants in their October 3, 1984, submittal (Reference 6) for not providing protective structures against postulated reactor coolant system loop pipe breaks, to assure as low as reasonably achievable (ALARA) exposure to plant personnel. The Palo Verde value-impact analysis shows that the elimination of protective devices for RCS pipe breaks will save an occupational dose for plant personnel of approximately 560 person-rem for each unit over the operating lifetime of the facility. The staff review of the analysis shows it to be a reasonable estimate of dose savings. Therefore, with respect to occupational exposure, the staff finds that there is a radiological benefit to be gained by eliminating the need for protective structures.

VI

In view of the staff's evaluation findings, conclusions, and recommendations above, the Commission has determined that, pursuant to 10 CFR 50.12(a), this exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby approves the scheduled partial exemption from GDC 4 of Appendix A

to 10 CFR Part 50, to permit the licensees not to consider dynamic effects, as detailed in Part II of this exemption, and hence, not require pipe whip restraints and jet impingement shields associated with postulated pipe breaks in the RCS main loop piping of Palo Verde, Unit 1, as specified in the licensees' letters, dated June 7, 1984 and November 13, and 15, 1985. This exemption is for a period ending with the completion of the second refueling outage, or the adoption of the proposed rulemaking for modification of GDC 4, whichever occurs first.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (50 FR 48285).

The exemption is effective upon the date of issuance.

Dated at Bethesda, Maryland this 22 day of November, 1985.

For The Nuclear Regulatory Commission,

Hugh L. Thompson,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

References

- (1) Letter E. E. Van Brunt, Jr., of Arizona Public Service Company to the Nuclear Regulatory Commission, Docket Nos. STN 50-528/529/530, June 7, 1984.
- (2) Letter E. E. Van Brunt, Jr., of Arizona Public Service Company to the Director of Nuclear Reactor Regulation, Docket Nos. STN 50-528 , November 13, 1985.
- (3) Letter E. E. Van Brunt, Jr., of Arizona Public Service Company to the Nuclear Regulatory Commission, Docket Nos. STN 50-528 , November 15, 1985.
- (4) Letter A. E. Scherer of Combustion Engineering, Inc., to Darrell G. Eisenhut, Docket No. STN 50-470, June 14, 1983, with enclosure, "Basis for Design of Plant Without Pipe Whip Restraints for RCS Main Loop Piping."
- (5) Letter A. E. Scherer of Combustion Engineering, Inc., to Darrell G. Eisenhut, Docket No. STN 50-470F, December 23, 1983, with enclosure, "Leak Before Break Evaluation of the Main Loop Piping of a CE Reactor Coolant System," Revision 1, November 1983.
- (6) Letter E. E. Van Brunt, Jr., of Arizona Public Service Company, ANPP-30736 to the Nuclear Regulatory Commission, Docket Nos. STN 50-528/529/530, October 3, 1984.
- (7) Mechanistic Fracture Evaluation of Reactor Coolant Pipe Containing a Postulated Circumferential Throughwall Crack, WCAP-9556, Rev. 2, May 1981, Westinghouse Class 2 proprietary.
- (8) Tensile and Toughness Properties of Primary Piping Weld Metal for use in Mechanistic Fracture Evaluation, WCAP-9787, May 1981, Westinghouse Class 2 proprietary.
- (9) Westinghouse Response to Questions and Comments Raised by Members of ACRS Subcommittee on Metal Components During the Westinghouse Presentation of September

25, 1981, Letter Report NS-EPR-2519, E. P. Rahe to Darrell G. Eisenhut, November 10, 1981, Westinghouse Class 2 Proprietary.

(10) NRC Generic Letter 84-04, "Safety Evaluation of Westinghouse Topical Reports Dealing with Elimination of Postulated Breaks in PWR Primary Main Loops," February 1, 1984.

(11) Lawrence Livermore National Laboratory Report, UCRL-86249, "Failure Probability of PWR Reactor Coolant Loop Piping," by T. Lo, H. H. Woo, G. S. Holman and C. K. Chou, February 1984 (Preprint of the paper intended for publication).

(12) NRC Letter Cecil O. Thomas to A. E. Scherer of Combustion Engineering, Inc., Docket No. STN 50-470, October 11, 1984, with enclosure, "Safety Evaluation Report on the Elimination of Large Primary Loop Ruptures as a Design Basis".

Note.—Non-Proprietary versions of References 7 and 8 are available in the NRC Public Document Room as follows:

(7) WCAP 9570.

(8) WCAP 9788.

All other referenced documents are available in the NRC PDR.

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[Docket Nos. 50-443 and 50-444]

Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 and 2); Exemption

1

On March 30, 1973, Public Service Company of New Hampshire, et al.¹ {applicants} tendered an application for licenses to construct Seabrook Station, Units 1 and 2 (Seabrook or the facility) with the Atomic Energy Commission (currently the Nuclear Regulatory Commission or the Commission). Following a public hearing before the Atomic Safety and Licensing Board, the Commission issued Construction Permit Nos. CPPR-135 and CPPR-136 permitting the construction of the Units 1 and 2, respectively, on July 7, 1976. Each unit of the facility is a pressurized water reactor, containing a Westinghouse Electric Company nuclear steam supply system, located at the applicant's site in Seabrook, New Hampshire.

¹ The current construction permit holders for Seabrook Station are: Bangor Hydro-Electric Company, Canal Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation, Connecticut Light & Power Company, Fitchburg Gas & Electric Light Company, Hudson Light & Power Department, Maine Public Service Company, Massachusetts Municipal Wholesale Electric Company, Montauk Electric Company, New England Power Company, New Hampshire Electric Cooperative, Inc., Public Service Company of New Hampshire, Taunton Municipal Lighting Plant, United Illuminating Company, Vermont Electric Generation and Transmission Cooperative, Inc., and Washington Electric Cooperative, Inc.

On June 29, 1981, the applicants tendered an application for Operating Licenses for the facilities, currently in the licensing review process.

II

The Construction Permits issued for construction Units 1 and 2 of the Seabrook Station provide, in pertinent part, that the facility is subject to all rules, regulations and orders of the Commission. This includes General Design Criterion (GDC) 4 of Appendix A to 10 CFR 50. GDC 4 requires that structures, systems and components important to safety shall be designed to accommodate the effects of, and to be compatible with, the environmental conditions associated with the normal operation, maintenance, testing and postulated accidents, including loss-of-coolant accidents. These structures, systems and components shall be appropriately protected against dynamic effects, including the effects of missiles, pipe whipping, discharging fluids that may result from equipment failures, and from events and conditions outside the nuclear power unit.

In a submittal dated August 9, 1984, the applicants enclosed Westinghouse Report WCAP-10567 (Reference 1) containing the technical basis for their request to eliminate the postulated breaks in the reactor coolant loop (RCL) piping of Seabrook Station, Units 1 and 2. The applicants further stated that eliminating these postulated breaks would result in eliminating their associated dynamic effects which are specifically defined as the effects of missiles, pipe whipping, and fluid jets. In the February 1, 1985 submittal, the applicants stated that granting of their request (1) eliminates the need to postulate longitudinal and circumferential pipe breaks in the RCL primary piping (hot leg, cold leg, and crossover leg piping); (2) eliminates the need to install associated pipe whip restraints in the RCL primary piping; and (3) eliminates the requirement to analyze and design for the dynamic effects of these breaks including jet impingement, reactor cavity pressurization and load combination assumptions. The exemption request will not apply to the containment design bases, the emergency core cooling system, or environmental qualification, engineered safety features systems response, or the design of the RCS heavy component supports.

The applicants' submittal of February 1, 1985, contains the results of an analysis of the occupational radiation dose reduction which provides the value-impact analysis for Seabrook Station, Units 1 and 2. The technical

information contained in Reference (1) together with the value-impact analysis, provided a comprehensive justification for requesting limited exemptions from the requirements of GDC 4.

From the deterministic fracture mechanics analysis contained in the technical information furnished, the applicants concluded that postulated breaks up to and including the double-ended guillotine breaks (DEGB) of the primary loop coolant piping in Seabrook 1 and 2 need not be considered as a design basis for installing protective structures, such as pipe whip restraints and jet impingement shields, to guard against the dynamic effects associated with such postulated breaks. However, the applicants will continue to postulate the equivalent area of a DEGB as the design basis for the containment, the ECCS, the engineered safety systems response, environmental qualification and the design of the RCS heavy component supports.

III

The Commission's regulations require that applicants provide protective measures against the dynamic effects of postulated pipe breaks in high energy fluid system piping. Protective measures include physical isolation from postulated pipe rupture locations, if feasible, or the installation of pipe whip restraints, jet impingement shields or compartments. In 1975, concerns arose as to the asymmetric loads on pressurized water reactor (PWR) vessels and their internals which could result from these large postulated breaks at discrete locations in the main primary coolant loop piping. This led to the establishment of Unresolved Safety Issue (USI) A-2, "Asymmetric Blowdown Loads on PWR Primary Systems."

The NRC staff, after several review meetings with the Advisory Committee on Reactor Safeguards (ACRS) and a meeting with the NRC Committee to Review Generic Requirements (CRGR), concluded that an exemption from the regulations would be acceptable as an alternative for resolutions of USI A-2 for sixteen facilities owned by eleven licensees in the Westinghouse Owners' Group (one of these facilities, Fort Calhoun, has a Combustion Engineering nuclear steam supply system). This NRC staff position was stated in Generic Letter 84-04, published on February 1, 1984 (Reference 2). The generic letter states that the affected licensees must justify an exemption to GDC 4 on a plant-specific basis. Other PWR applicants or licensees may request similar exemptions from the requirements of GDC 4 provided that

they submit an acceptable technical basis for eliminating the need to postulate pipe breaks.

The acceptance of an exemption was made possible by the development of advanced fracture mechanics technology. These advanced fracture mechanics techniques deal with relatively small flaws in piping components (either postulated or real) and examine their behavior under various pipe loads. The objective is to demonstrate by deterministic analyses that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before the flaws can grow to critical or unstable sizes which could lead to large break areas such as the DEGB or its equivalent. The concept underlying such analyses is referred to as "leak-before-break" (LBB). There is no implication that piping failures cannot occur, but rather that improved knowledge of the failure modes of piping systems and the application of appropriate remedial measures, if indicated, can reduce the probability of catastrophic failure to insignificant values.

Advanced fracture mechanics technology was applied in topical reports (References 3, 4, and 5) submitted to the staff by Westinghouse on behalf of the licensees belonging to the USI A-2 Owners' Group. Although the topical reports were intended to resolve the issue of asymmetric blowdown loads that resulted from a limited number of discrete break locations, the technology advanced in these topical reports demonstrated that the probability of breaks occurring in the primary coolant system main loop piping is sufficiently low such that these breaks need not be considered as a design basis for requiring installation of pipe whip restraints or jet impingement shields. The staff's Topical Report Evaluation is included as a part of Reference 2.

Probabilistic fracture mechanics studies conducted by the Lawrence Livermore National Laboratories (LLNL) on both Westinghouse and Combustion Engineering nuclear steam supply system main loop piping (Reference 6) confirm that both the probability of leakage (e.g., undetected flaw growth through the pipe wall by fatigue) and the probability of a DEGB are very low. The results given in Reference 6 are that the best-estimate leak probabilities for Westinghouse nuclear steam supply system main loop piping range from 1.2×10^{-8} to 1.5×10^{-7} per plant year and the best-estimate DEGB probabilities range from 1×10^{-12} to 7×10^{-12} per plant year. Similarly, the best-estimate leak

probabilities for Combustion Engineering nuclear steam supply system main loop piping range from 1×10^{-8} per plant year to 3×10^{-8} per plant year, and the best-estimate DEGB probabilities range from 5×10^{-14} to 5×10^{-13} per plant year. The results do not affect core melt probabilities in any significant way.

During the past few years it has also become apparent that the requirement for installation of large, massive pipe whip restraints and jet impingement shields is not necessarily the most cost effective way to achieve the desired level of safety, as indicated in Enclosure 2, Regulatory Analysis, to Reference 2. Even for new plants, these devices tend to restrict access for future inservice inspection of piping; or if they are removed and reinstalled for inspection, there is a potential risk of damaging the piping and other safety-related components in this process. If installed in operating plants, high occupational radiation exposure (ORE) would be incurred while public risk reduction would be very low. Removal and reinstallation for inservice inspection also entail significant ORE over the life of a plant.

IV

The primary coolant system of Seabrook, Units 1 and 2 described in Reference 1, has four main loops each comprising a 33.9 inch diameter (outside) hot leg, a 37.5 inch diameter crossover leg and 32.4 inch diameter cold leg piping. The materials in the primary loop piping are wrought stainless steel pipe with cast stainless steel fittings and associated welds. In its review of Reference 1, the staff evaluated the Westinghouse analyses with regard to:

- The location of maximum stresses in the piping, associated with combined loads from normal operation and the SSE;
- Potential cracking mechanisms;
- Size of through-wall cracks that would leak a detectable amount under normal loads and pressure;
- Stability of a "leakage-size crack" under normal plus SSE loads and the expected margin in terms of load;
- Margin based on crack size; and
- The fracture toughness properties of wrought and thermally-aged cast stainless steel piping and weld material.

The NRC staff's criteria for evaluation of the above parameters are delineated in its Topical Report Evaluation, Enclosure 1 to Reference 2, Section 4.1, "NRC Evaluation Criteria", and are as follows:

(1) The loading conditions should include static forces and moments (pressure, deadweight and thermal expansion) due to normal operation, and the forces and moments associated with the safe shutdown earthquake (SSE). These forces and moments should be located where the highest stresses and the lowest material toughness are coincident for base materials, weldments and safe-ends.

(2) For the piping run/systems under evaluation, all pertinent information which demonstrates that degradation or failure of the piping resulting from stress corrosion cracking, fatigue or water hammer is not likely, should be provided. Relevant operating history should be cited, which includes system operational procedures; system or component modification; water chemistry parameters, limits and controls; resistance of material to various forms of stress corrosion, and performance under cyclic loadings.

(3) A through-wall crack should be postulated at the highest stressed locations determined from (1) above. The size of the crack should be large enough so that the leakage is assured of detection with adequate margin using the minimum installed leak detection capability when the pipe is subjected to normal operational loads.

(4) It should be demonstrated that the postulated leakage crack is stable under normal plus SSE loads for periods of time; that is, crack growth, if any, is minimal during an earthquake. The margin, in terms of applied loads, should be determined by a crack stability analysis, i.e., that the leakage-size crack will not experience unstable crack growth even if larger loads (larger than design loads) are applied. This analysis should demonstrate that crack growth is stable and the final crack size is limited, such that a double-ended pipe break will not occur.

(5) The crack size margin should be determined by comparing the leakage-size crack to critical-size cracks. Under normal plus SSE loads, it should be demonstrated that there is adequate margin between the leakage-size crack and the critical-size crack to account for the uncertainties inherent in the analyses, and leakage detection capability. A limit-load analysis may suffice for the purpose; however, an elastic-plastic fracture mechanics (tearing instability) analysis is preferable.

(6) The materials data provided should include types of materials and materials specifications used for base metal, weldments and safe-ends, the materials properties including the J-R curve used in the analyses, and long-

term effects such as thermal aging and other limitations to valid data (e.g. J maximum, maximum crack growth).

V

Based on its evaluation of the analysis contained in Westinghouse Report WCAP-10587 (Reference 1), the staff finds that the applicants have presented an acceptable technical justification, addressing the above criteria, for not installing protective devices to deal with the dynamic effects of large pipe ruptures in the main loop primary coolant system piping of Seabrook Station, Units 1 and 2. This finding is predicated on the fact that each of the parameters evaluated for Seabrook is enveloped by the generic analysis performed by Westinghouse in Reference 3, and accepted by the staff in Enclosure 1 to Reference 2. Specifically:

(1) The loads associated with the highest stressed location in the main loop primary system piping are 2332 kips (axial), 37,045 in-kips (bending moment) and result in maximum stresses of about 97% of the bounding stress used by Westinghouse in Reference 3. Further, these loads are approximately 88% of those established by the staff as limits.

(2) For Westinghouse plants, there is no history of cracking failure to reactor primary coolant system loop piping. The Westinghouse reactor coolant system primary loop has an operating history which demonstrates its inherent stability. This includes a low susceptibility to cracking failure from the effects of corrosion (e.g. intergranular stress corrosion cracking), water hammer, or fatigue (low and high cycle). This operating history totals over 400 reactor-years, including five (5) plants each having 15 years of operation and 15 other plants with over 10 years of operation.

(3) The leak rate calculations performed for the Seabrook plants using an initial through-wall crack of 7.5 inches are identical to those of Enclosure 1 to Reference 2. The Seabrook plants have an RCS pressure boundary leak detection system which is consistent with the guidelines of Regulatory Guide 1.45, and it can detect leakage of one (1) gpm in one hour. The calculated leak rate through the postulated flaw results in a factor of at least 10 relative to the sensitivity of the Seabrook plants' leak detection system.

(4) The margin in terms of load based on fracture mechanics analyses for the leakage-sized crack under normal plus SSE loads is within the bounds calculated by the staff in Section 4.2.3. of Enclosure 1 to Reference 2. Based on a limit-load analysis, the load margin is

about 2.0 and based on the J-limit, the margin is at least 1.1.

(5) The margin between the leakage-size crack and the critical-size crack was calculated by a limit-load analysis. Again, the results demonstrated that a margin of at least 3 on crack size exists and is within the bounds of Section 4.2.3 of Enclosure 1 to Reference 2.

(6) In addition to the wrought stainless steel pipes, the Seabrook units have cast stainless steel fittings and associated welds in the primary coolant system. As an integral part of its review, the staff's evaluation of the properties data of Reference 7 is enclosed as Appendix I to this exemption. In Reference 7, data for ten (10) plants are presented and lower bound or "worst case" materials properties were identified and used in the analysis performed in the Reference 1 report by Westinghouse. The applied J for Seabrook in Reference 1 for cast stainless steel fittings was less than 3000 in-lb/in². Hence, the staff's upper bound 3000 in-lb/in² on the applied J (refer to Appendix I, page 6) was not exceeded.

In view of the analytical results presented in the Westinghouse Report for Seabrook (Reference 1) and the staff's evaluation findings related above, the staff concludes that the probability of large pipe breaks occurring in the primary coolant system loops of Seabrook Station, Units 1 and 2, is sufficiently low such that pipe breaks and their associated dynamic loading effects as indicated in the applicants' submittals need not be considered as a design basis for requiring pipe whip restraints and jet impingement shields. These dynamic loading effects include pipe whip, jet impingement, missiles, reactor cavity overpressurization, and load combination assumptions. Eliminating the need to consider these dynamic loading effects for this particular application will not in any way affect the design bases for the containment, the emergency core cooling system, the design of RCS heavy component supports, the engineered safety features systems response, or the environmental qualification of equipment for Seabrook.

However, in order to provide the Commission with an opportunity to consider the long term aspects of the NRC staff's recent acceptance of the "leak-before-break" approach, these limited exemptions are restricted to a period extending until the completion of the second refueling outage of Seabrook Station, Unit 1, pending the outcome of Commission rulemaking on this issue.

The staff also reviewed the value-impact analysis provided by the applicants in their submittal for not providing protective structures against

postulated reactor coolant system loop pipe breaks to assure as low as reasonably achievable (ALARA) exposure to plant personnel. Consideration was given to design features for reducing doses to personnel who must operate, service and maintain the Seabrook instrumentation, controls, equipment, etc. The Seabrook value-impact analysis shows that the elimination of protective devices for RCS pipe breaks will save an occupational dose for plant personnel of approximately 1400 person-rem for both units over their operating lifetime. The staff review of the analysis shows it to be a reasonable estimate of dose savings. Therefore, with respect to occupational exposure and ALARA considerations, the staff finds that there is a radiological benefit to be gained by eliminating the need for the protective structures.

VI

In view of the staff's evaluation findings, conclusions, and recommendations above, the Commission has determined that, pursuant to 10 CFR 50.12(a), the following exemption is authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. The Commission hereby approves the requested scheduler limited exemption from GDC 4 of Appendix A to 10 CFR Part 50, to permit the applicants to eliminate the protective devices and the dynamic loading effects, as described in Part II of this exemption, associated with the postulated primary loop pipe breaks for Seabrook Station, Units 1 and 2. The exemption will expire upon completion of the GDC 4 rulemaking changes but no later than the second refueling outage of Seabrook Station, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (50 FR 47468).

The exemption will become effective upon date of issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 22 day of November 1985.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

References

- (1) Westinghouse report WCAP-10567, "Technical Bases for Eliminating Large Primary Loop Pipe Ruptures as the Structural Design Basis for Seabrook."

Units 1 and 2, June 1984, Westinghouse Class 2 proprietary.

(2) NRC Generic Letter 84-04, "Safety Evaluation of Westinghouse Topical Reports Dealing with Elimination of Postulated Breaks in PWR Primary Main Loops," February 1, 1984.

(3) Mechanistic Fracture Evaluation of Reactor Coolant Pipe Containing a Postulated Circumferential Throughwall Crack, WCAP-9558, Rev. 2, May 1981, Westinghouse Class 2 proprietary.

(4) Tensile and Toughness Properties of Primary Piping Weld Metal for Use in Mechanistic Fracture Evaluation, WCAP-9787, May 1981, Westinghouse Class 2 proprietary.

(5) Westinghouse Response to Questions and Comments Raised by Members of ACRS Subcommittee on Metal Components During the Westinghouse Presentation of September 25, 1981, Letter Report NS-EPR-2519, E.P. Rahe to Darrell G. Eisenhut, November 10, 1981, Westinghouse Class 2 proprietary.

(6) Lawrence Livermore National Laboratory Report, UCRL-86249, "Failure Probability of PWR Reactor Coolant Loop Piping," by T. Lo, H. H. Woo, G.S. Holman and C. K. Chou, February 1984 (Reprint of a paper intended for publication).

(7) Westinghouse Report WCAP-10456, "The Effects of Thermal Aging on the Structural Integrity of Cast Stainless Steel Piping for Westinghouse Nuclear Steam Supply Systems," November 1983, Westinghouse Class 2 proprietary.

Note.—Non-proprietary versions of References 1, 3, 4, 5 and 7 are available in the NRC Public Document Room as follows:

(1) WCAP 10566.

(3) WCAP 9570.

(4) WCAP 9788.

(5) Non-proprietary version attached to the Letter Report.

(7) WCAP 10457.

All other referenced documents are available in the NRC PDR.

Appendix I—Evaluation of Westinghouse Report WCAP 10456, "The Effects of Thermal Aging on the Structural Integrity of Cast Stainless Steel Piping for Westinghouse Nuclear Steam Supply Systems"

Introduction

The primary coolant piping in some Westinghouse Nuclear Steam Supply Systems (NSSS) contain cast stainless steel base metal and weld metal. The base metal and weld metal are fabricated to produce a duplex structure of delta (w) ferrite in an austenitic matrix. The duplex structure produces a material that has a higher yield strength, improved weldability and greater

resistance to intergranular stress corrosion cracking than a single phase austenitic material. However, as early as 1965 (Ref. 1), it was recognized that long time thermal aging at primary loop water temperatures (550° F-650° F) could significantly affect the Charpy impact toughness of the duplex structured alloys. Since the Charpy impact test is a measure of a material's resistance to fracture, a loss in Charpy impact toughness could result in reduced structural stability in the piping system.

The purpose of Report WCAP 10456 is to evaluate whether cast stainless steel base metal and weld metal containing postulated cracks will be sensitive to unstable fracture during the 40 year life of a nuclear power plant. In order to determine whether a piping system will behave in such a fashion, the pipe materials' mechanical properties, design criteria and method of predicting failure must be established. In this evaluation, we will assess the mechanical properties of thermally aged cast stainless steel pipe materials, which are reported in Report WCAP 10456.

Discussion

1. Weld Metal.

Report WCAP 10456 refers to test results reported in a paper by Slama, et al. (Ref. 2) to conclude that the weld metal in primary loop piping would not be overly sensitive to aging and that the aged cast pipe base metal material would be structurally limiting. In the Slama report eight (8) welds were evaluated. The tensile properties were only slightly affected by aging. The Charpy U-notch impact energy in the most highly sensitive weld decreased from 7daJ/cm² (40 ft-lbs) to near 4daJ/cm² (24 ft-lbs) after aging for 10,000 hours at 400° C (752° F). This change was not considered significant. The relatively small effect of aging on the weld, as compared to cast pipe material was reported to be caused by a difference in microstructure and lower levels of ferrite in the weld than in the cast pipe material.

2. Cast Stainless Steel Pipe Base Metal.

Report WCAP 10456 contains mechanical property test results from a number of heats of aged cast stainless steel material and a metallurgical study, which was performed by Westinghouse, to support a statistically based model for predicting the effect of thermal aging on the Charpy impact test properties of cast stainless steel. As a result of these tests and the proposed model, Westinghouse concludes that the fracture toughness test results from one heat of material tested represents end-of-life conditions for the ten (10) plants

surveyed. The ten (10) plants surveyed are identified as Plants A through J.

a. *Mechanical Property Test Results Reported in WCAP 10456.* Mechanical property test results on aged and unaged cast stainless steel materials which were reported in a paper by Landerman and Bamford (Ref. 3), Bamford, Landerman and Diaz (Ref. 4), Slama et. al. (Ref. 2) were discussed in Report 10456. In addition, Westinghouse performed confirmatory Charpy V notch and J-integral tests on aged cast stainless steel material, which was tested and evaluated by Slama et. al.

The results of these tests indicate that:

(1) The fatigue crack growth rate of aged or unaged material in air and pressurized water reactor environments were equivalent.

(2) Tensile properties were essentially unaffected except for a slight increase in tensile strength and a decrease in ductility.

(3) J-integral test results indicate that the J_{IC} and tearing modulus, T_c , are affected by aging.

b. Mechanism Study in WCAP 10456.

The tests and literature survey conducted by Westinghouse indicate that the proposed mechanism of aging occurs in the range of operating temperatures for pressurized water reactors and the data from accelerated aging studies can be used to predict the behavior at operating temperatures.

c. *Cast Stainless Steel Pipe Test.* The materials data discussed in the previous section of this evaluation were obtained from small specimens. As a consequence, the J-R results are limited to relatively short crack extensions. To investigate the behavior of cast stainless steel in actual piping geometry, Westinghouse performed two experiments, one of which was with thermally aged cast stainless steel and the other test was identical except that the steel was not thermally aged.

Each pipe tested contained a throughwall circumferential crack to the extent specified in WCAP 10456. The pipe sections were closed at the ends, pressurized to nominal PWR operating pressure and then bending loads were applied.

The results of the tests were very similar, in that both pipes displayed extensive ductility, and stable crack extension. There was no observed crack extension or fast fracture.

The results of the Westinghouse pipe experiments indicate that cast stainless steel, both aged and unaged, can withstand crack extensions well beyond the range of the J-R results with small specimens. However, if crack extension is predicted in an actual application of thermally aged cast stainless steel in a

piping system, we believe that it is prudent to limit the applied J to 3000 in-lbs/in² or less unless further studies and/or experiments demonstrate that higher values are tolerable. Loss of initial toughness due to thermal aging of cast stainless steels at normal nuclear facility operating temperatures occurs slowly over the course of many years; therefore, continuing study of the aging phenomenon may lead to a relaxation of this position. Conversely, in the unlikely event that the total loss of toughness and the rate of toughness loss are greater than those projected in this evaluation, the staff will take appropriate action to limit the values to that which can be justified by experimental data. Because the aging is a slow process, the staff believes there would be sufficient time for the staff to recognize the problem and to rectify the situation. However, the staff believes this situation is highly unlikely because the staff has accepted only the lower bounds of data that were gathered among ten plants encompassing the range of materials in use.

d. *Effects of Thermal Aging on Westinghouse Supplied Centrifugally Cast Reactor Coolant Piping Reported in WCAP 10456.* The reactor coolant cast stainless steel piping materials in the plants identified in WCAP 10456 as A through J, were produced to the specification SA-351, Class CF8A as outlined in ASME Code Section II, Part A and also to Westinghouse Equipment Specification G-678864, as revised. For these materials, Westinghouse has calculated the predicted end-of-life Charpy U-notch properties, based on their proposed model. The two (2) standard deviation end-of-life lower limit value for all the plants surveyed was greater than the Charpy V notch properties of the aged reference materials, which Westinghouse indicates represents end-of-life properties for all the plants. As a result, Westinghouse concluded that the amount of embrittlement in the aged reference material exceed the amount projected at end-of-life for all cast stainless steel pipe materials in Plants A through J.

Conclusions

Based on our review of the information and data contained in Westinghouse Report WCAP 10456, we concluded that:

1. Weld metal that is used in cast stainless steel piping system is initially less fracture resistant than the cast stainless steel base metal. However, the weld metal is less susceptible to thermal aging than the cast stainless steel base

metal. Hence, at end-of-life the cast stainless steel base metal is anticipated to be the least fracture resistant material.

2. The Westinghouse proposed model may be used to predict the relative amount of embrittlement on a heat of cast stainless steel material. The two standard deviation lower confidence limit for this model will provide a useful engineering estimate of the predicted end-of-life Charpy impact properties for cast stainless steel base metal.

3. Since there is considerable scatter in J-integral test data for the heats of material tested, lower bound values for J_c and T should be used as engineering estimates for the fracture resistance of the aged reference material. We believe these values should also provide a lower bound for the fracture resistance of aged and unaged weld metal. If crack extension is predicted in an actual application of cast stainless steel in a piping system, we conclude that the applied J should be limited to 3000 in-lbs/in² or less unless further studies and tests demonstrate that higher values are tolerable. The Westinghouse pipe tests demonstrate that this may be possible.

4. Since the predicted end-of-life Charpy impact values for the materials in Plants A through J are greater than the value measured for the aged reference material, the lower bound fracture properties for aged reference material may be used to determine the fracture resistance for the cast stainless steel material in Plants A through J.

References

- (1) F.H. Beck, E.A. Schoefer, J.W. Flowers, M.E. Fontana, "New Cast High Strength Alloy Grades by Structural Control," *ASTM STP 369* (1985)
- (2) G. Slama, P. Petrequin, S.H. Masson, T.R. Mager, "Effect of Aging on Mechanical Properties of Austenitic Stainless Steel Casting and Welds," presented at SMIRT 7 Post conference Seminar 6—Assuring Structural Integrity of Steel Reactor Pressure Boundary Components, August 29/30, 1983, Monterey, Ca.
- (3) E.I. Landerman and W.H. Bamford, "Fracture Toughness and Fatigue Characteristics of Centrifugally Cast Type 316 Stainless Steel After Simulated Thermal Service Conditions Presented at the Winter Annual Meeting of the ASME, San Francisco, Ca., December 1978 (MPC-8 ASME)
- (4) W.H. Bamford, E.I. Landerman and E. Diaz, "Thermal Aging of Cast Stainless Steel and Its Impact on Piping Integrity." Presented at ASME Pressure Vessel and Piping Conference, Portland, Oregon, June 1983. To be published in *ASME Trans.*

[FR Doc. 85-28918 Filed 12-4-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23927; 70-6827]

Public Service Co. of Oklahoma and Ash Creek Mining Co.; Proposal To Extend Short-Term Loans to Mining Subsidiary

November 29, 1985.

Public Service Company of Oklahoma ("PSO") P.O. Box 201, Tulsa, Oklahoma 74102, an electric utility subsidiary of Central and South West Corporation, a registered holding company, and Ash Creek Mining Company ("Ash Creek"), P.O. Box 201, Tulsa, Oklahoma 74102, a mining subsidiary of PSO, have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to sections 6, 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 thereto.

By order dated November 30, 1976 (HCAR No. 19777), PSO was authorized to organize and acquire all of the authorized common stock of Ash Creek, and to transfer to Ash Creek all of its existing coal interests in exchange for Ash Creek's common stock having an aggregate par value equal to PSO's capital costs relating to the coal interests. PSO transferred to Ash Creek properties in return for 383,904 shares of Ash Creek's common stock, par value \$10 per share. PSO was also authorized to make short-term loans to Ash Creek to finance Ash Creek's fuel programs. By orders dated December 28, 1982, December 20, 1983, and January 4, 1985 (HCAR Nos. 22802, 23172 and 23565, respectively), PSO was authorized to continue its financing of Ash Creek through December 31, 1985 up to a principal amount outstanding at any one time of \$2,171,500. It is estimated that the aggregate amount of financing will be \$2,050,000 on December 31, 1985.

Applicants-declarants request an extension of PSO's authorization to finance Ash Creek through December 31, 1987, in the maximum principal amount of \$2,972,500 outstanding at any one time. Said amount includes \$450,000 to cover estimated budgeted expenditures during 1986 and \$472,500 to cover estimated budgeted expenditures during 1987.

The amended application-declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 23, 1985, to the Secretary,

Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended, may be authorized.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28899 Filed 12-4-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Agency Form Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted a proposed collection of information to the Office of Management and Budget for review.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

- (1) Type of request—New.
- (2) Originating office—Office of the Legal Adviser.
- (3) Title of information collection—Application for Registration—South Africa and Fair Labor Standards.
- (4) Frequency—Nonrecurring.
- (5) Respondents—U.S. firms operating in South Africa.
- (6) Estimated number of responses—300.
- (7) Estimated total number of hours needed to respond—300.

The proposed rule containing this collection of information was published in the *Federal Register* on November 8, 1985 (50 FR 46455).

ADDITIONAL INFORMATION OR

COMMENTS: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 632-3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7231.

Dated: November 26, 1985.
Donald J. Bouchard,
*Assistant Secretary for Administration,
Designate.*
[FR Doc. 85-28895 Filed 12-4-85; 8:45 am]
BILLING CODE 4710-22-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Rulemaking, Research, and Enforcement Programs; Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on January 10, 1986, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by January 2, 1986. If sufficient time is available, questions received after the January 2, date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be

answered. A consolidated list of the questions submitted by January 2, and the issues to be discussed will be mailed to interested persons on January 6, 1986, and will be available at the meeting.

ADDRESS: Questions for the January 10 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590.

The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on January 10, 1986. The meeting will begin at 10:30 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to

NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590.

Issued on December 2, 1985.

*Barry Felrice,
Associate Administrator for Rulemaking.*
[FR Doc. 85-28913 Filed 12-4-85; 8:45 am]
BILLING CODE 4910-59-M

VETERANS ADMINISTRATION

Station Committee on Education Allowances; Meeting

Notice is hereby given pursuant to section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on January 15, 1986, at 9:00 a.m., the Portland, Oregon Regional Office Station Committee on Educational Allowances shall at Room 1427, Federal Building, 1220 SW. Third Avenue, Portland, Oregon, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Apprenticeship Training Programs at Intel Corporation, Hillsboro, Oregon, should be continued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: November 26, 1985.

*Robert L. Winters,
Director, VA Regional Office.*
[FR Doc. 85-28897 Filed 12-4-85; 8:45 am]
BILLING CODE 8320-21-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, December 9, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,371-NR

Penn Square Bank, National Association,
Oklahoma City, Oklahoma

Case No. 46,374-SR

The Peoples State Savings Bank, Auburn,
Michigan

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors,

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled:

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: December 2, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-28973 Filed 12-3-83; 12:53 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, December 9, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassessments, retirements, separations, removals, etc.:

Federal Register

Vol. 50, No. 234

Thursday, December 5, 1985

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: December 2, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-28974 Filed 12-3-85; 12:53 pm]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 85-28584.

PREVIOUSLY ANNOUNCED DATE AND TIME:
Thursday, December 5, 1985, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN ADDED
TO THE AGENDA: Technical amendments
to Commission's regulations (11 CFR, Chapter I).

* * *

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, December 10, 1985, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g
438(b), and Title 26, U.S.C.

Matters concerning participation in civil
actions or proceedings or arbitration
Internal personnel rules and procedures or
matters affecting a particular employee

* * *

DATE AND TIME: Thursday, December 12, 1985, 10:00 a.m.

PLACE: 999 E Street, NW., Washington D.C. (Ninth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft Advisory Opinion 1985-36

Robert R. Weed, The Bob Weed Company

Notice of Inquiry on Petition for Rulemaking
Filed by Common Cause
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION:
Mr. Fred Eiland, Information Officer,
202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 85-29005 Filed 12-3-85; 3:46 pm]

BILLING CODE 6715-01-M

PLACE: NTSB Board Room, Eighth Floor,
800 Independence Avenue, SW.,
Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report:* Derailment of Amtrak Passenger Train No. 60, The Montrealer, on the Central Vermont Railroad near Essex Junction, VT, July 7, 1984, and *Railroad Accident/Incident Summary Reports:* Derailment of Amtrak Trains near Connellsburg, PA, on May 28, 1984 and near Granby, CO, April 16, 1985.

2. *Highway Accident Report and Letters of Recommendation:* Collision of Tuba City

Unified School District Schoolbus and Bell Creek, Inc. Tractor-Semitrailer on US 160, near Tuba City, AZ, April 29, 1985.

3. *Highway Accident Report:* Schoolbus Rollover; Jefferson, North Carolina, March 13, 1985.

CONTACT PERSON FOR MORE

INFORMATION: Catherine T. Kaputa (202) 382-6525.

Dated: December 2, 1985.

Catherine T. Kaputa,
Federal Register Liaison Officer.

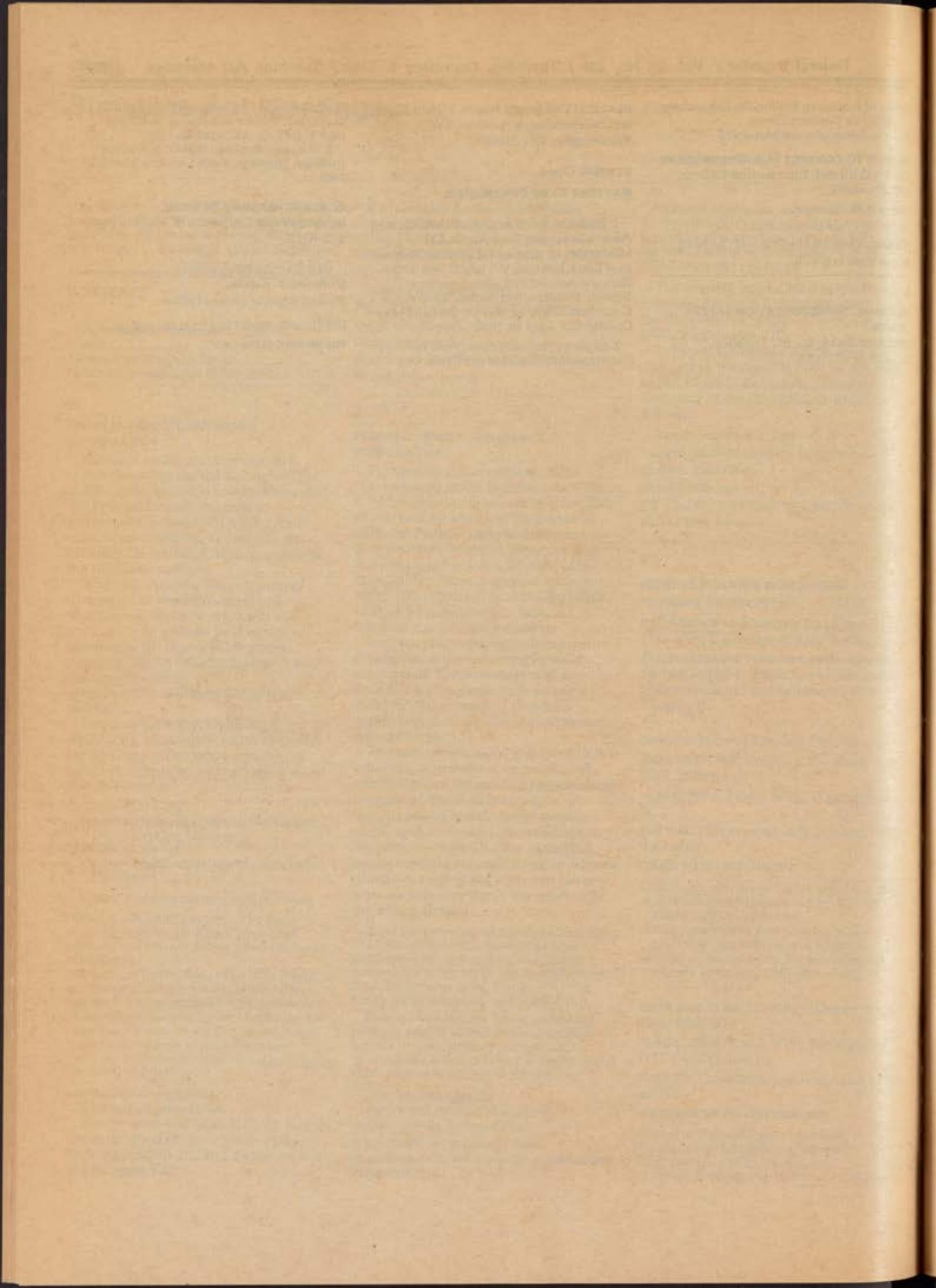
[FR Doc. 85-28919 Filed 12-2-85; 4:58 pm]

BILLING CODE 7533-01-M

4

NATIONAL TRANSPORTATION SAFETY
BOARD

TIME AND DATE: 9 a.m., Tuesday,
December 10, 1985.



Thursday
December 5, 1985



Part II

**Department of
Transportation**

Federal Aviation Administration

Availability of Draft Environmental Impact Statement for the Expansion of Stapleton International Airport, Denver, CO; Notice

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Availability of Draft Environmental
Impact Statement for the Expansion of
Stapleton International Airport,
Denver, CO.**

The Denver Airports District Office of the Federal Aviation Administration (FAA) announces the availability for public review of the Draft Environmental Impact Statement for the proposed expansion of Stapleton International Airport, Denver, Colorado. Copies of the DEIS are available for public review and comment at the Denver Central Library, the Dahlia Branch Library, the Montbello Branch Library, the Park Hill Branch Library, the Aurora Central Library, the Aurora North Branch Library, the Northwest Reading Center, the Commerce City Branch Library, the Brighton Branch Library, the Northglenn Branch Library, and the Thornton Branch Library, the Northwest Mountain Region Federal Aviation Administration Airports Division Office (Seattle) and the Denver Airports District Office. Review comments must be received by Robert Bielek, Assistant Manager, Denver Airports District Office, 10455 East 25th Avenue, Aurora, Colorado 80010 by January 21, 1986. For additional information or questions please contact Dr. Bielek at (303) 340-5546.

Dated: November 15, 1985.

Robert M. Bielek,

*Assistant Manager, Denver Airports District
Office.*

[FR Doc. 85-28871 Filed 12-4-85; 8:45 am]

BILLING CODE 4910-13-M

Proposed Rule
Informal Airspace Meeting
Federal Aviation Administration
14 CFR Part 71

Thursday
December 5, 1985

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71
Informal Airspace Meeting; Proposed
Rule

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71****Informal Airspace Meeting**

AGENCY: Federal Aviation
Administration, DOT.

ACTION: Notice of Informal Airspace
Meeting.

SUMMARY: This notice announces an
informal airspace meeting to discuss the
proposed modification of the Dallas-Fort
Worth Terminal Control Area (TCA).

DATE: February 3, 1986, 7:00 p.m. Central
standard time.

ADDRESS: The Best Western Sandpiper
Inn, 4000 North Main, Fort Worth, Texas
76106 (East side Meacham Airport).

FOR FURTHER INFORMATION CONTACT:
Norman H. Scroggins, Manager, Dallas-
Fort Worth Airport Traffic Control
Tower, DFW Tower Building, Room 3,
P.O. Box 610368, Dallas-Forth Worth
Airport, Texas 75261; Telephone (214)
453-0660.

Issued in Washington, DC, on November
27, 1985.

Daniel J. Peterson,
*Manager, Airspace—Rules and Aeronautical
Information Division.*
[FIR Doc. 85-28875 Filed 12-4-85; 8:45 am]

BILLING CODE 4910-13-M

U.S. Environmental Protection Agency

Thursday
December 5, 1985

Part IV

**Environmental
Protection Agency**

40 CFR Parts 122, 124, and 125
National Pollutant Discharge Elimination
System; Compliance Extensions for
Innovative Technologies; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts, 122, 124, and 125**

[EN-FRL-2909-3]

The National Pollutant Discharge Elimination System; Compliance Extensions for Innovative Technologies**AGENCY:** U.S. Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: On June 25, 1984, the Agency promulgated a final rule implementing section 301(k) of the Clean Water Act (CWA). Under section 301(k), an industrial direct discharger of toxic and nonconventional pollutants who is required to achieve limitations reflecting the Best Available Technology Economically Achievable (BAT) under section 301(b)(2) of the CWA may request a compliance extension to no later than July 1, 1987, for the installation of an innovative technology. To qualify for an extension, the innovative technology must either produce a significantly greater effluent reduction than BAT or achieve the same effluent reduction as BAT at a significantly lower cost. The innovative technology must also have the potential for industry-wide application.

On October 5, 1984, the Natural Resources Defense Council (NRDC) filed a petition for review of the section 301(k) rule in the United States Court of Appeals for the District of Columbia. After consideration of NRDC's concerns, EPA filed a motion for voluntary remand in order to perform a new rulemaking under section 301(k). The Court of Appeals granted this motion on April 16, 1985.

By this notice, EPA is: (1) Responding to three comments raised by NRDC in response to EPA's September 21, 1981 proposed rule which the Agency did not address in the final rulemaking of June 25, 1984; (2) proposing certain revisions to the section 301(k) rule; and (3) reopening the entire section 301(k) rule for reconsideration and public comment. Accordingly, in addition to the changes proposed, EPA is republishing those portions of the rule which the Agency proposes to retain and is accepting comments on the entire rule. Interested persons are referred to the preambles in the following *Federal Register* notice for supplementary information on the options considered and rationales for the provisions the Agency proposes to retain: September 19, 1980 (45 FR 62509); September 21, 1981 (46 FR 46597); and June 25, 1984 (49 FR 25978).

DATES: Comments must be received on or before January 6, 1986.**ADDRESS:** Comments should be submitted to Ms. Marilyn Goode, Permits Division (EN-338), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. The complete rulemaking record and all comments received on this notice are available for public inspection at room 3219 Mall, 401 M St., SW., Washington, D.C. 20460.**FOR FURTHER INFORMATION CONTACT:** Ms. Marilyn Goode, 401 M St., SW., (EN-338), Washington, D.C. 20460, (202) 426-2970.**SUPPLEMENTARY INFORMATION:****I. Background**

The Clean Water Act outlines a two-step process by which industrial dischargers must achieve the national goal of eliminating the discharge of pollutants into the nation's navigable waters. The first step was meeting effluent limitations attainable by the application of Best Practicable Control Technology Currently Available (BPT) by July 1, 1977 (section 301(b)(1)(A) of the CWA). The second step involves meeting effluent limitations reflecting BAT by July 1, 1984 (section 301(b)(2) of the CWA).

The permits issued to industrial dischargers through the National Pollutant Discharge Elimination System (NPDES) under section 402 of the CWA incorporate the appropriate technology-based limitations and contain compliance schedules for achieving those limitations. Section 301(k) provides an industrial discharger subject to an NPDES permit with two options for qualifying for a compliance extension to July 1, 1987 from the BAT deadline of July 1, 1984. The first option is the installation of an innovative technology which produces an effluent reduction which is significantly greater than that required by BAT. The second option is the installation of an innovative technology which achieves the same level of effluent reduction as required by BAT with the potential for achieving that reduction at a significantly lower cost than BAT. In either case, the discharger must demonstrate that the proposed innovative technology has the potential for industry-wide application. The decision to grant a compliance extension is made by EPA or by a State with an approved NPDES program in consultation with EPA.

The Agency published an Advanced Notice of Proposed Rulemaking (ANPR) on September 19, 1980 (45 FR 62509) which outlined the issues and options

considered by the Agency on the implementation of section 301(k). The Agency then published a Notice of Proposed Rulemaking (NPR) on September 21, 1981 (46 FR 46597). A final rule was promulgated on June 25, 1984 (49 FR 25978). On October 5, 1984, NRDC filed a petition for review of the rule in the Court of Appeals for the District of Columbia. On January 15, 1985, EPA filed a motion for voluntary remand in order to conduct a new rulemaking to address certain issues of concern to NRDC. The court subsequently granted the petition on April 16, 1985.

In their petition for review, NRDC claimed that EPA failed to respond to certain comments on the proposed rule. NRDC also raised several substantive concerns with the rule. Accordingly, in this notice, EPA is responding to those comments NRDC asserts were unanswered. The Agency is also proposing certain revisions to the rule and reconsidering the rule in its entirety. Each of the issues raised by NRDC is discussed below with a proposed resolution for each. EPA especially requests comments, including any suggested alternatives, on the following issues, since the final rulemaking may adopt alternatives to the means of implementing section 301(k) proposed below.

A. Definition of "Innovative Technology"

In its June 25, 1984 final rule, EPA grouped the three undefined terms used in section 301(k), innovative "production processes," "control techniques," and "systems," under the umbrella term "innovative technology." The Agency defined that term as "a production process, a pollution control technique, or a combination of the two which satisfies one of the criteria in § 125.23 and which has not been commercially demonstrated in the industry of which the requesting discharger is a part." Accordingly, under EPA's regulations, a section 301(k) compliance extension is available for any "innovative technology" which will either produce a significantly greater effluent reduction than BAT or which will achieve the same effluent reduction as BAT at a significantly lower cost. In both instances, the innovative technology must have the potential for industry-wide application.

It has been suggested that the statutory language of section 301(k) can be interpreted to allow compliance extensions for innovative "production processes" and "control techniques" only if an effluent reduction greater than BAT is projected. Compliance

extensions for attaining BAT limitations with innovative technology which costs significantly less than the model BAT technology would not be available for innovative "production processes" and "control techniques." Moreover, industry-wide application would not need to be shown for these types of extensions. Under such a reading, extensions based on significantly lower costs would be available only for innovative "systems." Compliance extensions based upon greater effluent reductions would not be available for innovative "systems." Moreover, a demonstration of industry-wide application would only be required for "innovative systems."

When EPA developed its proposed regulations, the Agency recognized that the statutory language of section 301(k) may be susceptible to more than one reading. EPA believes, however, that it adopted the better reading of section 301(k) in its final rule. EPA reads the term "systems" to refer to a production process, control technique, or a combination of the two. EPA has not been able to identify a treatment "system" which would not also be either a production process or control technique or a combination of the two. Thus, in referring to "production processes" and "control techniques," the statute first mentions compliance extensions based on greater effluent reduction. It then proceeds to use the general term "systems" to refer to either of these technologies (or, of course, a combination of the two) in authorizing an alternative extension based upon greater cost savings. Finally, it uses the general term "systems" in requiring a demonstration of industry-wide application, thereby indicating that this showing is necessary for any innovative technology, whether it projects greater effluent reduction or cost savings.

The legislative history of the CWA supports EPA's reading of section 301(k). In discussing section 301(k), these three terms are mentioned interchangeably, frequently under the umbrella term "innovative technologies." These terms are referred to in connection with both increased effluent reductions and costs savings, as well as in connection with the potential for industry-wide application. For example, Representative Roberts (House floor manager for amendments to the CWA) referred to production process changes with increased effluent reduction or significantly lower costs (*3 Leg. Hist.* 340). In the Senate debate, Senator Stafford (Chairman of the Committee on Environment and Public Works) refers to extensions for innovative

"technology" which has industry-wide application, effluent reduction greater than BAT or the same reduction at less cost (*4 Leg. Hist.* 882; see also *3 Leg. Hist.* 639; *4 Leg. Hist.* 683; *4 Leg. Hist.* 882). Thus, the references to any kind of innovation in connection with increased effluent reduction, cost savings and industry-wide application indicate that Congress intended that compliance extensions were to be available for all innovative technologies based on either increased effluent reduction or cost savings, and that Congress also intended that a potential for industry-wide application be demonstrated for all kinds of innovations. EPA believes that if Congress had intended the distinctions suggested by the alternative reading noted above, these distinctions surely would have been mentioned in the legislative history of section 301(k). However, EPA found no mention of such distinctions. Moreover, the alternative reading of section 301(k) suggested above would mean that a compliance extension could not be obtained for an innovative "system" which projects greater effluent reduction. It is doubtful that Congress would have intended such an unfortunate result, especially in light of Congressional intent to encourage the development of innovative technologies.

EPA's reading of section 301(k) is also preferable for practical reasons. Attempting to distinguish "systems" from "production processes" and "control techniques" would be administratively difficult and could lead to unavoidably arbitrary decisions about the category to which a particular innovation belongs. In fact, EPA is unable to determine the content of the term "system" as a distinct technology from production processes, control techniques or a combination of the two. Although the Agency has participated in informal discussions on this subject, EPA has received no precise suggestions on how the term "systems" should be defined.

EPA received broad public support for its statutory interpretation regarding innovative technologies in response to both the ANPR and the proposal. NRDC was the only commenter to advocate an alternative reading of the provision on this issue. For all these reasons, EPA believes its reading of section 301(k) is the correct one. Accordingly, EPA proposes to change the existing definition of "innovative technology" only to clarify its interpretation of the statutory language.

B. Potential for Industry-wide Application

In order to receive a compliance extension under section 301(k), an

application must demonstrate that its proposed innovative technology has the "potential for industry-wide application." In its final rule, the Agency defined "potential for industry-wide application" as meaning that the technology proposed has the capacity to be applied in two or more plants in one or more industrial categories. It has been suggested that the phrase "potential for industry-wide application" should be interpreted to mean the potential for application in a majority of plants in the applicant's industrial category. In addition, it has been suggested that compliance extensions under section 301(k) should not be granted without assurance that the innovative technology would be used by other facilities. NRDC suggested that EPA should consider requiring that the other plants in an applicant's industrial category not be owned by the applicant, or that the applicant must offer the innovation commercially to other members of its industrial category.

EPA, when developing its proposed rule, gave much thought to the proper definition of "potential for industry-wide application." The Agency believed that the phrase, as used in the statute, was susceptible of various interpretations; therefore EPA investigated the legislative history of the Act in order to determine how broadly Congress interpreted it. The Agency found evidence that Congress intended the requirement to be satisfied when the technology in question could be applied at more than one plant in an industrial category. Furthermore, Congress contemplated that the plants in question could be owned by the same corporation, and that the applicant need not offer proprietary information to competitors. For example, Representative Roberts stated during the House debate that "for purposes of this section industry-wide application should be interpreted to include more than one plant and the plants might be a part of the same corporation. Further, if proprietary information is disclosed to the Administrator in a request for a time extension, the Administrator is expected to maintain the confidentiality of that information. In those cases . . . where a corporation has made the application with the understanding that the process would be utilized at more than one plant owned by that corporation, there clearly is no reason to divulge proprietary information to anyone. Nothing in this section shall preclude a corporation from entering into agreements with other corporations which subsequently utilize the proprietary process. This section is intended to serve as an

incentive to develop new processes". (3 Leg. Hist. 341). In the face of such language, EPA believes that the interpretation adopted in the final rule was the correct one.

EPA's interpretation will also increase the number of innovative technologies which may qualify for a compliance extension, thereby encouraging the development and use of new pollution control methods consistent with legislative intent. Determining whether there is a potential for application of the innovation in a majority of plants in an industrial category could be very difficult and time-consuming. A requirement that an applicant do so would thus discourage the development of innovative technologies even where significant environmental benefits might result. In addition, any requirement to divulge proprietary information could have the same discouraging effect, as well as possibly running afoul of the confidentiality provisions of section 308 of the CWA.

The Agency also believes that the "potential" for industry-wide application can exist in the absence of assurances that the innovation will be offered commercially. The innovation may well be patented and if not, the innovation could be patented and sold in the future. Moreover, the Agency must be mindful of Representative Roberts' comment (noted above) concerning the divulging of proprietary information. We therefore propose to leave unchanged the definition of "potential for industry-wide application" promulgated at 40 CFR 125.22(b). However, EPA especially requests comments on whether its rule could, and if so, should require applicants to make the innovative technology commercially available and/or require an applicant to demonstrate the applicability of the technology to a majority of plants in its industrial category.

C. Section 301(k) Extensions in the Absence of Categorical BAT Limitations

In EPA's September 21, 1981 proposed rule, the Agency proposed to grant section 301(k) extensions to applicants whose permit limits were based on a best professional judgment (BPJ) determination of BAT where no effluent limitations guidelines had been promulgated. When commenting on this proposal, NRDC suggested that Congress may not have intended this approach, since in the cases where EPA had not made an industry-wide determination of BAT through the promulgation of an effluent limitation guideline, any innovative technology proposed by a discharger who planned

to install and operate the technology should be considered BAT for that discharger.

EPA proposes to retain the availability of section 301(k) extensions for permittees with BAT limitations based upon BPJ in the absence of a promulgated effluent limitations guideline. Limitations based upon a BPJ determination of BAT are imposed under the authority of CWA sections 402(a)(1) and 301(b)(2)(a). Accordingly, the statute on its face authorizes extensions to BPJ permittees. Moreover, NRDC apparently misconstrues the nature of a BPJ determination. BPJ determinations are comparable to determinations made in promulgating an effluent limitations guideline. A *categorical* determination of BAT (based upon the CWA section 304(b)(2) factors) is made in developing a BPJ determination of BAT where no guideline has been promulgated, just as is the case in developing an effluent limitations guideline. See *U.S. Steel v. Train*, 558 F. 2d 822, 844 (7th Cir. 1977). Accordingly, BPJ permittees may propose innovative control technologies for their industrial categories that are more effective or less costly than that industry's BAT requirements and should be provided the same incentive to do so.

Moreover, the potential effectiveness of section 301(k) would be severely limited if extensions could not be granted where a BPJ determination of BAT has been made, since many discharges would be excluded from eligibility merely because, although most of their wastestreams are covered by promulgated effluent guidelines, one or more of their wastestreams are regulated on a BPJ basis. Such a narrow interpretation would hardly foster the development of innovative control technologies that Congress intended.

For these reasons, EPA proposes to continue offering compliance extensions under section 301(k) to BPJ permittees.

D. Whether Technology Is Considered "Innovative"

In its June 25, 1984 final rule, the Agency defined "innovative technology" as one which has not been commercially demonstrated in the applicant's industrial category (§ 125.22(a)). Some commenters expressed concern over the length of time a technology might be considered sufficiently innovative to qualify for a section 301(k) extension. Many were concerned that the time limit would be unreasonably short; NRDC was concerned that it might be unreasonably long. In response to these concerns, EPA stated in the preamble of its final rule that a technology should be considered demonstrated when it had

been successfully operated at full scale in a commercial plant for a full cycle of the plant's operations.

The Agency's intent was to distinguish pilot plant or bench scale operations of the technology from reliance upon the technology in a commercial plant. We believed that it was not possible to promulgate a definitive cut-off date for the length of time all technologies would be considered innovative.

NRDC has expressed concern that in some cases, EPA would consider a technology to be innovative indefinitely and would continue to grant extensions even though such widespread adoption of the technology might be occurring that extenstions would no longer be justified on the grounds that the technology was innovative. In response, EPA is proposing to amend the regulatory language of § 125.23 to clarify that the Director must make a finding of "no commercial demonstration" each time a 301(k) compliance extension is granted. Thus, the fact that a technology was once deemed innovative clearly does not mean that the next proposed application of the technology will be considered innovative if commercial demonstration has occurred in the meantime. EPA believes that its proposal gives the Director ample authority to deny applications for compliance extensions whenever a technology has been subject to fairly widespread adoption or even when such adoption has not yet taken place, as long as commercial demonstration has occurred.

EPA especially requests comments on whether there are circumstances under which a technology should not be considered innovative even though it has not been commercially demonstrated. For example, if virtually all members of an industrial category requested compliance extensions for a particular technology at approximately the same time, the technology would presumably entail very little risk and it may be questionable whether it should be deemed innovative, even if a full-scale commercial demonstration had not yet occurred. Although EPA believes that this occurrence is unlikely, the Agency specifically solicits comments on whether its definition of "innovative technology" should address this situation.

For example, a regulatory provision might be included providing that the extensions granted under section 301(k) shall not exceed such number as the Director finds necessary to ascertain whether the particular technology produces a significantly greater effluent

reduction than BAT or the same effluent reduction at a significantly lower cost. This restriction would be similar to a provision in the Clean Air Act (Section 111(j)(1)(c)) which limits the number of waivers from new source performance standards granted for the use of innovative technology. Although section 301(k) has no such limiting language, it does accord the Administrator the discretion to determine what constitutes "innovative technology."

In addition, we note that one of the principal purposes of the technical review panel provided for in the final rule (see § 124.2) is to make uniform determinations on whether a particular technology is innovative. The panel will consist of EPA and State personnel who are familiar with the industrial category in question. The members of the panel will thus be aware of the existence and progress of any successful innovative technology in their areas of expertise.

E. Grants of Section 301(k) Extensions by NPDES States

NRDC stated in its comments on EPA's September 21, 1981 proposal that States should be free to deny applications for compliance extensions under section 301(k), even when the requisite demonstrations are made. NRDC pointed out that the language of our proposed regulation ("the Director shall grant a compliance extension . . .") could be construed as requiring States to grant section 301(k) extensions if the necessary demonstrations are made.

The CWA and existing NPDES regulations provide that States may adopt more stringent regulations than EPA in their NPDES programs. Accordingly, it has always been EPA's position that States can decide to omit section 301(k) extensions from their programs or impose more stringent requirements for obtaining such extensions (see § 123.25(a)). Nevertheless, it appears that the language of the final rule can be misconstrued. EPA is therefore proposing to amend the regulations to provide that the Director *may* grant a section 301(k) compliance extension if the necessary demonstrations are made (see proposed § 125.23(a)). This language will make it clear that States may deny any or all applications for such extensions, and may choose not to entertain any such applications.

F. New Dischargers

NRDC commented in response to our September 21, 1981 proposal that it agreed with EPA that new sources and indirect dischargers should not be eligible for section 301(k) compliance

extensions. NRDC also commented that new dischargers should not be eligible for compliance extensions under section 301(k). (A new discharger is a facility which did not commence discharging before August 13, 1979, which is not a new source, and which has never received a finally effective NPDES permit. In contrast, generally, a new source is any facility constructed after new source performance standards are issued for its industrial category under section 306 of the CWA (see §§ 122.2, 122.29.)

EPA believes that whether or not a new discharger may obtain a section 301(k) extension should be decided by the State Director or Regional Administrator on a case-by-case basis. In making these determinations, the permitting authority should consider whether the new discharger is more analogous to a new source or to an existing source, i.e., whether or not the facility has the opportunity to plan and install the most innovative technology prior to commencing discharge. In those cases where a new discharger has not commenced operations, the facility is in a position similar to that of a new source, and should therefore ordinarily be treated as a new source would be treated. Under the NPDES regulations, new sources and new dischargers are required to come into compliance not less than 90 days after their permits are issued (see § 122.29(d)(4)), and this requirement should continue to apply to any new discharger who starts operations with a new plant or equipment. Generally, a new facility should be in compliance at the time its discharge commences.

On the other hand, there may be certain new dischargers whose position is analogous to that of an existing discharger. For example, an existing indirect discharger who "switches" its discharge from a POTW after August 1979 and therefore becomes a direct discharger, would be classified as a new discharger if it did not engage in construction which would make it a "new source" within the meaning of § 122.29(b)(1) after issuance of new source performance standards. A compliance extension under section 301(k) may be appropriate, since such an applicant would be in essentially the same position as an existing direct discharger.

An existing discharger who has never applied for and received an NPDES permit may also technically be classified as a new discharger under the NPDES regulations (see § 122.2). Because of its illegal actions, however, it is not appropriate that such dischargers should be eligible for section 301(k) extensions.

Another category of discharger mentioned in the NPDES regulations is a recommencing discharger, i.e., one who recommences discharge after terminating operations (see § 122.2, 122.29). Whether or not a recommencing discharger may obtain a compliance extension under section 301(k) should also be determined on a case-by-case basis. The considerations would be similar to those discussed above for new dischargers. For example, if a recommencing discharger engages in construction within the meaning of § 122.29(b)(1) before starting operations again, it may actually be classified as a new source. In that case, it would not be eligible for a compliance extension under section 301(k). If such construction has occurred but no new source performance standards have been issued for the facility's industrial category, it still may not be appropriate to allow section 301(k) extensions to that facility, since its position is similar to that of a new source and it is required to comply upon commencement of discharge. On the other hand, if the recommencing discharger uses the same plant and equipment as with previous operations or if construction has occurred within the meaning of § 122.29(b)(3), the Director may decide to grant a section 301(k) extension on the grounds that such a facility is similar to an existing source.

In light of the above, EPA is proposing to amend § 125.23(a) to provide that notwithstanding § 122.29(d)(4), the Director *may* grant section 301(k) extensions to a new, existing, or recommencing discharger where the requirements of § 125.23 are met (§ 122.29(d)(4) would otherwise require such dischargers to meet all of their permit conditions within the shortest feasible time, not to exceed ninety days). This proposed language ensures that the State Director or Regional Administrator has the discretion to decide on a case-by-case basis whether new or recommencing dischargers are eligible for such extensions. EPA believes that Congress intended EPA and the States to make these decisions in consideration of the requirements of the Clean Water Act and in particular with Congress' exclusion of new sources from the provisions of section 301(k). Although new dischargers are subject to section 301(b)(2)(A) and the permitting requirements of section 402 in order to discharge, section 301(k) is phrased in discretionary terms ("the Administrator . . . *may* establish a date for compliance" [emphasis added]). Accordingly EPA has some discretion in defining the class of dischargers eligible

for a section 301(k) compliance extension.

The Agency especially solicits comments on different circumstances under which it may or may not be appropriate to grant compliance extensions under section 301(k) to new or recommencing dischargers and any alternative means of dealing with such dischargers. In addition, the Agency solicits comments on whether the general considerations discussed above should be incorporated into the regulations rather than communicated as guidance.

G. Compliance Extensions for Less Than Three Years

In its comments on our September 21, 1981 proposals, NRDC observed that the proposal did not make clear that extensions under 301(k) need not be granted automatically for the full three year period (up to July 1, 1987). NRDC also suggested that the applicant be required to make a specific showing of the amount of time needed to install and operate the innovative technology and that the Director make a specific finding in this respect. The regulation promulgated on June 25, 1984, stated that the extensions would be granted to no later than July 1, 1987, but did not require a specific showing of the time needed or a finding by the Director. The preamble to the final rule also clarified that extensions need not necessarily be granted for the full three-year period. To avoid any possible confusion and make clear that dischargers who are able to install and operate the proposed innovative technology before the 1987 deadline will be required to do so, EPA is proposing to amend § 125.23 to require the applicant to submit a proposed compliance schedule providing for installation and start-up of the proposed innovative technology as soon as possible but no later than July 1, 1987. In addition, EPA proposes to amend § 125.23 to make clear that the Director may only grant an extension for the amount of time necessary to install and start-up the innovative technology but no later than July 1, 1987, and to make clear that any effluent limitations specified in the permit in accordance with the section 301(k) regulations must be achieved as soon as possible but no later than July 1, 1987.

H. Other Amendments

In addition to the changes discussed above which EPA is proposing in response to NRDC's concerns, the Agency is also proposing technical amendments to the June 25, 1984 final rule. The first is a change in the definition of "consultation with the

Regional Administrator" promulgated at § 124.2. To clarify that the technical review panel must evaluate all requests approved by either the Regional Administrator or the State Director, the Agency is proposing to change § 124.2 to refer to "review by the Regional Administrator following evaluation by a panel . . . of all section 301(k) applications approved by himself or by the State Director". Similarly, the Agency is proposing to amend § 125.23 to reference evaluation by the technical review panel.

In addition, the Agency is proposing to amend the certification requirement of § 125.25(b). The current certification language is the same as that required of NPDES permit applicants before the requirement was changed pursuant to the NPDES litigation settlement (48 FR 39619, September 1, 1983). The proposed amendment simply brings the requirement for section 301(k) requests into conformance with the new certification requirement for NPDES permit applicants.

Finally, EPA proposes to clarify the language of § 125.20 in light of the availability of section 301(k) compliance extensions only to "direct" dischargers. We have also clarified the language of § 125.27(a) to include a reference to the § 122.21(1)(4) application requirements for requesting a section 301(k) extension.

II. Regulatory Impact Analysis

Executive Order 12291 requires that a regulatory impact analysis be conducted if certain criteria are met, such as an annual economic impact of a regulation totaling \$100 million. The section 301(k) program is a voluntary one and it is unlikely that a facility will request a compliance extension unless it is in its economic interest to do so. Facilities will balance the extra cost of demonstrating, installing and operating an innovative technology and the risk of failure of that technology against the financial value of the extension and the potential for savings resulting from application of the innovative technology.

The section 301(k) program should result in cost savings for facilities, except in those few instances in which the innovative technology fails. EPA has received applications for section 301(k) extensions which contended that savings of several million dollars will result, and that improved effluent treatment will occur. To the extent that the innovative technologies receive widespread application, the benefits of lower cost and more effective treatment will spread to other segments of industry and society as a whole.

Because of the voluntary nature of the program and because of its expected positive economic benefits, the Agency has concluded that a regulatory impact analysis is not required for the section 301(k) program.

This document has been submitted to the Office of Management and Budget (OMB) as also required by Executive Order 12291.

III. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires an analysis of any significant economic impact of proposed and final regulations on small entities. Because it is a voluntary program, only those small businesses for which there is a perceived economic benefit will participate in the program. For these reasons, the Agency has concluded that the section 301(k) program will not have a significant impact on a substantial number of small entities and that a Regulatory Flexibility Analysis is not required, pursuant to section 605(b) of the RFA.

In response to comments received on the September 21, 1981, proposal, the Agency reevaluated the impact of the program on small entities with respect to the requirements for cost certification by a professional engineer. The provision now allows a waiver of that requirement under certain circumstances. The waiver should further alleviate the concerns of small businesses.

IV. Reports Impact Analysis

As was noted above, the section 301(k) program is a voluntary program. Because of its voluntary nature and judging by the response to the proposed rule, the reporting and recordkeeping requirements of the program are likely to affect a small number of industrial direct dischargers. (The Agency has received to date only five applications for section 301(k) compliance extensions.) A firm participating in the program ordinarily will already have developed information on the performance of its innovative technology or will obtain the information from an equipment vendor selling the innovative technology. The only recordkeeping requirement is that the firm retain the information on which its section 301(k) request is based for the life of the permit containing the compliance extension. The retention of this information will aid EPA in its evaluation of the performance of the program.

The information collection requirements in this proposal have been submitted to OMB under the provisions

of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2040-0066.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indian lands.

40 CFR Part 125

Water pollution control, Waste treatment and disposal.

Dated: November 13, 1985.

A. James Barnes,
Acting Administrator.

PART 122—EPA-ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart D—Transfer, Modification, Revocation and Reissuance, and Termination of Permits

1. The authority citation for Part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. In § 122.62, paragraph (a)(5) is proposed to be retained in its present form. The text is set out as follows for the convenience of the user.

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs—see § 123.25).

• • •

(5) When the permittee has filed a request for a variance under CWA section 301(c), 301(g), 301(h), 301(i), 301(k) or 316(a) or for "fundamentally different factors" within the time specified in §§ 122.21 or 125.27(a).

PART 124—PROCEDURES FOR DECISIONMAKING

Subpart A—General Program Requirements

3. The authority citation for Part 124 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

4. Paragraph (a) of § 124.2 is proposed to be amended by revising the definition of "consultation with the Regional Administrator" as follows:

§ 124.2 Definitions.

Consultation with the Regional Administrator (§ 124.62(a)(2)) means review by the Regional Administrator following evaluation by a panel of the technical merits of all section 301(k) applications approved by himself or by the State Director. The panel (to be appointed by the Director of the Office of Water Enforcement and Permits) will consist of Headquarters, Regional, and State personnel familiar with the industrial category in question.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

5. The authority citation for Part 125 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

6. Subpart C of 40 CFR Part 125 is proposed to be revised as follows:

Subpart C—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology Under Section 301(k) of the Act

Sec.

- 125.20 Purpose and scope.
- 125.21 Statutory authority.
- 125.22 Definitions.
- 125.23 Request for compliance extension.
- 125.24 Permit conditions.
- 125.25 Signatories to request for compliance extension.
- 125.26 Supplementary information and recordkeeping.
- 125.27 Procedures.

Subpart C—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology Under Section 301(k) of the Act

§ 125.20 Purpose and scope.

This subpart establishes the criteria and procedures to be used in determining whether an industrial direct discharger will be granted a compliance extension for the installation of an innovative technology.

§ 125.21 Statutory authority.

Section 301(k) provides that the Administrator (or a State with an approved NPDES program, in consultation with the Administrator) may grant a compliance extension for BAT limitations to a discharger which installs an innovative technology. The innovative technology must produce either a significantly greater effluent reduction than that achieved by the best available technology economically achievable (BAT) or the same level of treatment as BAT at a significantly lower cost. The Administrator is authorized to grant compliance extensions to no later than July 1, 1987.

reduction than that achieved by the best available technology economically achievable (BAT) or the same level of treatment as BAT at a significantly lower cost. The Administrator is authorized to grant compliance extensions to no later than July 1, 1987.

§ 125.22 Definitions.

(a) The term "innovative technology" means an innovative system (a production process, a pollution control technique, or a combination of the two) which satisfies one of the criteria in § 125.23 and which has not been commercially demonstrated in the industry of which the requesting discharger is a part.

(b) The term "potential for industry-wide application" means that an innovative technology can be applied in two or more facilities which are in one or more industrial categories.

(c) The term "significantly greater effluent reduction than BAT" means that the effluent reduction over BAT produced by an innovative technology is significant when compared to the effluent reduction over best practicable control technology currently available (BPT) produced by BAT.

(d) The term "significantly lower cost" means that an innovative technology must produce a significant cost advantage when compared to the technology used to achieve BAT limitations in terms of annual capital costs and annual operation and maintenance expenses over the useful life of the technology.

§ 125.23 Request for compliance extension.

(a) Following evaluation by the technical review panel specified in § 124.2 ("Consultation with the Regional Administrator") the Director may grant a compliance extension (notwithstanding § 122.29(d)(4)) for the time needed to install and start-up an innovative technology to no later than July 1, 1987. The extension may be granted to a new, existing, or recommending discharger that demonstrates:

(1) That the installation and operation of its proposed innovative technology at its facility will result in a significantly greater effluent reduction than BAT and has the potential for industry-wide application; or

(2) That the installation and operation of its proposed innovative technology at its facility will result in the same effluent reduction as BAT at a significantly lower cost and has the potential for industry-wide application;

(b) The applicant shall submit with his application a proposed compliance schedule which provides for installation start-up of the innovative technology within the shortest possible time but no later than July 1, 1987.

(c) In the case of any compliance extension granted under this Subpart, the Director shall make a finding that the technology has not been commercially demonstrated in the applicant's industrial category.

(d) Any effluent limitations specified in the permit in accordance with this Subpart must be achieved as soon as possible but no later than July 1, 1987.

§ 125.24 Permit conditions.

The Director may include any of the following conditions in the permit of a discharger to which a compliance extension beyond July 1, 1984 is granted:

(a) A requirement that the discharger report annually on the installation, operation, and maintenance costs of the innovative technology;

(b) Alternative BAT limitations that the discharger must meet as soon as possible and no later than July 1, 1987, if the innovative technology limitations that are more stringent than BAT are not achievable.

§ 125.25 Signatories to request for compliance extension.

(a) All section 301(k) requests must be signed in accordance with the provisions of 40 CFR 122.22.

(b) Any persons signing a request under paragraph (a) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiring of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) A professional engineer shall certify that the estimates by the applicant of the costs for the BAT control equipment and for the innovative technology are made in accordance with good engineering practice and represent, in his judgment, the best information available. The Director may waive the requirements for certification under this subsection if, in his opinion, the cost of such certification is unreasonable when compared to the annual sales of the applicant.

§ 125.26 Supplementary information and recordkeeping.

(a) In addition to the information submitted in support of the request, the applicant shall provide the Director, at his or her request, such other

information as the Director may reasonably require to assess the performance or cost of the innovative technology.

(b) Applicants shall keep records of all data used to complete the request for a compliance extension for the life of the permit containing the compliance extension.

§ 125.27 Procedures.

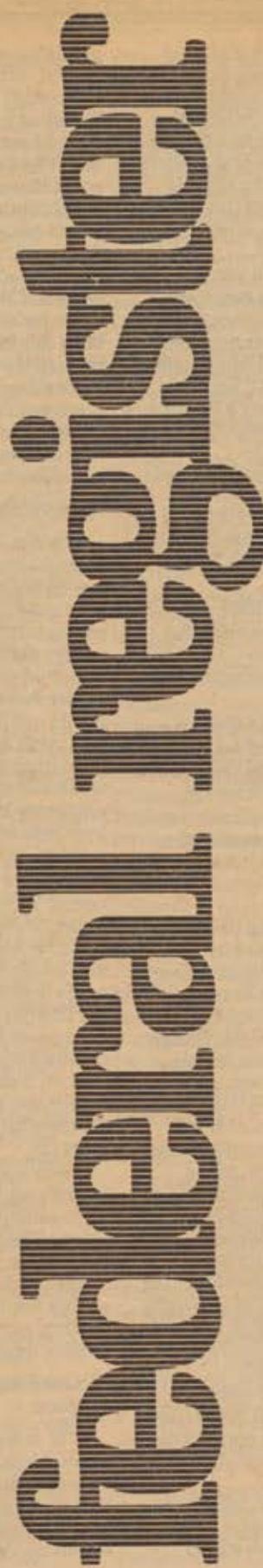
(a) The procedure for requesting a section 301(k) compliance extension is contained in §§ 124.62, 124.63 and 122.21(l)(4). In addition, notwithstanding § 122.21(l)(4), the Director may accept applications for such extensions after the close of the public comment period on the permit if the applicant can show that information necessary to the development of the innovation was not available at the time the permit was written and that the innovative technology can be installed and operated in time to comply with the July 1, 1987 deadline.

(b) The procedure for appealing a decision on a request for a compliance extension is contained in §§ 124.60 and 124.64.

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Thursday
December 5, 1985



Part V

**Department of
Energy**

Office of Conservation and Renewable
Energy

10 CFR Part 440
**Weatherization Assistance for Low-
Income Persons; Final Rule**

DEPARTMENT OF ENERGY**Office of Conservation and Renewable Energy****10 CFR Part 440**

(Docket No. CAS-RM-80-508)

Weatherization Assistance for Low-Income Persons**AGENCY:** Office of Conservation and Renewable Energy, Department of Energy.**ACTION:** Interim Final rule.

SUMMARY: The Department of Energy (DOE) is issuing an interim final rule today amending the Weatherization Assistance for Low-Income Persons Program. The amendment implements a recent statutory change requiring that a Performance Fund be established to provide additional financial assistance to those States demonstrating best performance under the Program. This rule sets forth the following criteria for determining annually which States have demonstrated the best performance: percentage of eligible dwelling units within the State which have been weatherized during the evaluation period, energy savings data supplied by the States, and States' actual performance in achieving goals as projected in the State Application.

This rule will give each State an equal opportunity to compete for the funds without regard to climate or amount of funding allocation. Each State will be evaluated individually on how effectively and efficiently it operates the DOE weatherization program.

DOE is issuing this rule to address the concerns of public comments received in response to the Notice of Proposed Rule published in the *Federal Register*, 50 FR 29620, (July 19, 1985) and to provide opportunity for additional comments on the changes made in this rule.

DATES: Effective January 6, 1986.

Written comments must be received on or before January 6, 1986. A public hearing will be held in Washington, DC on December 20, 1985 at 9:30 a.m. Requests to speak must be received by December 18, 1985. (See section III, Opportunity for Public Comment, for further information).

ADDRESSES: All written comments (5 copies) and requests to speak at the hearing should be addressed to: Conservation and Renewable Energy, Department of Energy, Office of Hearings and Dockets, Forrestal Building, Room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9319. Although five (5) copies are requested to

be submitted, this is not a mandatory requirement. In the event any person wishing to submit a written comment cannot provide five copies, alternative arrangements can be made in advance with the Office of Hearings and Dockets.

Public Hearing: The public hearing will be held in Room 1E-245 (1st Floor), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 9:30 am.

FOR FURTHER INFORMATION CONTACT: Greg Reamy, Office of Weatherization Assistance Program, Conservation and Renewable Energy, Department of Energy, Mail Stop 5G-023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2207

Vivian Lewis or Daniel Ruge, Office of General Counsel, Department of Energy, Mail Stop 6B-144, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9527

SUPPLEMENTARY INFORMATION:

- I. Introduction and Background of the Program
- II. Amendments to the Weatherization Assistance Program
- III. Opportunity for Public Comment
- IV. Environmental, Regulatory Impact, Regulatory Flexibility, Paperwork Reduction Act, and Coordinating Agency Reviews

I. Introduction and Background of the Program*Introduction*

The Department of Energy (DOE) is issuing an interim final rule amending the regulations for the Weatherization Assistance for Low-Income Persons Program (Program or WAP), 10 CFR Part 440, issued under Title IV of the Energy Conservation and Production Act, as amended, 42 U.S.C. 6861 *et seq.* (Act or Program Statute). Today's action implements a new provision of the Program required by the recent passage of section 404, 42 U.S.C. 6865, of the Human Services Reauthorization Act of 1984, Pub. L. 98-558, 98 Stat. 2888 (Amending Act). This amendment will provide States an opportunity to compete annually for additional funding based on their performance in operating the Weatherization Assistance Program. DOE is issuing this interim final rule to address the concerns of public comments received on the Notice of Proposed Rulemaking, 50 FR 29620 (July 19, 1985), and to provide an opportunity for additional public comment on the changes made by this rule.

DOE proposed to use four criteria in evaluating States' performance: percentage of units weatherized (20

points), comparable energy savings (20 points), achievement of goals (30 points), and actual expenditures (30 points). Based on comments received, DOE has deleted actual expenditures as a quantified criterion. In doing so, DOE notes however, that the States' capability of expending allocated funds is still central to the amount awarded to States which qualify for the Performance Fund based on the remaining evaluative criteria. Consequently, the maximum score for each remaining criterion has been increased. Moreover, DOE has revised the period that will be used in evaluating performance. Unlike the proposed rule which contained an 18-month relevant reporting period the final rule adopts a 12-month period which coincides with the Federal fiscal year.

Background of the Program

The Act authorized DOE to establish a program to weatherize the homes of low-income persons, particularly those who are elderly or handicapped. The program is intended to reduce national energy consumption, particularly of imported oil, and to reduce the impact of higher fuel costs on low-income families. Funds are provided to install weatherization materials such as insulation, storm windows, caulking and weatherstripping, and to make furnace efficiency modifications and other improvements to conserve energy.

DOE currently makes grants to States, the District of Columbia, and under certain circumstances, Indian tribal organizations. The Governor of each State, or designee, applies for, receives and administers the grant funds. The funds are distributed by the States and the District of Columbia to local governments and nonprofit organizations to weatherize homes. Certain Indian tribal organizations also administer Federal funds and perform weatherization activities under this Program.

Funds are allocated by DOE through a formula which reflects the relative need for weatherization assistance among the States. The formula takes into account the number of low-income households, the percentage of total residential energy used for space heating and cooling, and the number of heating and cooling degree days in each State.

II. Amendment to the Weatherization Program

DOE is issuing this interim final rule to establish the criteria and procedures by which States will be evaluated to determine which have demonstrated the best program performance. This evaluation will serve as the basis for

DOE awarding funds to States from the Performance Fund.

DOE will determine annually the percentage of appropriated funds to be set aside for each year's Performance Fund and will notify the States of its determination in the Annual Grant Guidance. This amount will be between 5 and 15 percent of the appropriated funds.

Section 440.26—Establishment of the Performance Fund

DOE will evaluate performance for the purpose of this Performance Fund beginning in fiscal year 1986. From the fiscal year 1987 appropriation DOE will set aside not less than 5 percent and not more than 15 percent of the amount appropriated for the fiscal year. Funds for the first year will be made available to program year 1987. The Amending Act requires that the determinations of best performance be on a fiscal year basis (October 1 through September 30 of the following calendar year). The program, however, is operated on a program year basis (April 1 through March 31 of the following calendar year). DOE proposed using relevant evaluative information from an 18-month period beginning with a given fiscal year (October 1) and running through the related program year (March 31 of the second following calendar year). The first relevant reporting period was proposed to run from October 1, 1985, through March 31, 1987. However, several comments received expressed strong concern over the proposed 18-month relevant reporting period. Some comments questioned DOE as to why it was evaluating one full program year and the half of another. Other comments suggested that using an 18-month evaluation period overall and 12-month period for determining carryover was not only confusing but also contradictory. Still another commenter wanted to know if DOE would allow States to amend their 1985 plans since the 1985 program year plans have already been approved, and in some cases nearly completed, without knowledge of the Performance Fund.

DOE acknowledges the difficulty in evaluating and scoring the criteria given the statutory requirement that performance be evaluated on a fiscal year basis. Consequently, DOE has made some changes based on comments received regarding the relevant reporting period. Thus, to meet not only the statutory requirement of the legislation, but also to address some of the concerns of the comments, DOE will evaluate the criteria in this interim final rule based on the fiscal year which will consist of the last six months of one

program year and the first six months of the next program year. Additionally, since the 1985 State Plans were submitted and approved without knowledge of the Performance Fund, DOE will allow States to amend their plans, where appropriate.

Only the 50 States and the District of Columbia will be eligible to receive money from the Performance Fund. Indian tribes which are grantees of the program will not be eligible because, at the discretion of DOE, the tribes at present usually receive funding at more than 100 percent of their tentative allocation. One comment suggested that DOE was unfairly excluding certain Indian tribes who are grantees of the program from participation in the Performance Fund. Pursuant to § 440.11(b), DOE may allocate up to 150 percent of the proportionate share of a State's tentative allocation for Native Americans who are grantees of the weatherization program. This amount of funds would normally represent more funds than an Indian tribe grantee would receive if the tribe qualified under the Performance Fund. Furthermore, by excluding these Indian tribe grantees from participating in the Performance Fund, their tentative allocation will not be reduced by the percentage established to operate the Performance Fund, as would be the case for the 50 States and the District of Columbia. Moreover, because the amount of funds involved with these grantees is so small, it would be impractical to include them in the Performance Fund.

The following paragraphs discuss the performance criteria DOE will use for evaluating States' performance and distributing funds placed in the Performance Fund.

Section 440.27—Evaluating State Performance

A. Information

This section lists the information DOE will use in its annual evaluation of the States. This information is already provided to DOE by the States as part of the application and reporting aspects of the program. DOE will not require new or additional information in evaluating States' performance.

DOE will evaluate a State's performance based on information provided in the State Plan, pursuant to § 440.14; the monitoring plan, and the training and technical assistance plan, pursuant to § 440.12; the monthly and quarterly reports required pursuant to § 440.25; and to the extent necessary, any relevant additional information available to DOE. The Monthly Status

Report, DOE Form 459-E, will be the primary reporting form for evaluating performance. The Quarterly Financial Status Report, DOE Form 269, will be used to evaluate pertinent financial data as it applies to the criteria in this Performance Fund. For purposes of the Performance Fund, failure to submit these forms within 30 days after the end of the fiscal year will result in a score of zero for the applicable criterion.

Several comments requested clarification of § 440.27(a)(3) which states that DOE will use any additional relevant information available in evaluating States' performance. It will be the responsibility of each State to insure the information provided in each of the areas above reflects an accurate account, as relevant, of operations to date and of how the State intends to operate its Weatherization Program. However, if necessary, pursuant to § 440.27(a)(3), DOE could consider historical data gathered by DOE, such as a State's production, expenditures, average cost per home, and average cost for materials.

B. Percentage of Eligible Units Weatherized

The first performance criterion, which is mandated by the Amending Act, is the percentage of eligible dwelling units within the State which have been weatherized using low-income weatherization assistance program funds during the relevant reporting period. This percentage will consist of the actual completions reported to DOE on the monthly and quarterly reports divided by the planned completions submitted by the States in their State plans pursuant to § 440.14(b)(8)(ii), multiplied by the maximum score for this criterion of 25. This criterion will provide equity to all States regardless of funding level, climate, or eligible population. For example, a State which plans 1,200 completed units during the relevant reporting period and completes 1,000 actual units will be evaluated in the formula as follows:

$1,000 \div 1,200 = .83 \times 25 = 21$. Therefore, 21 would be the score that the State would receive out of a possible 25. DOE will use data on the Monthly Status Report to track production of completed units. This figure, while tracked monthly, will be a cumulative figure of all production activity during the relevant reporting period.

DOE proposed to award 20 points for this criterion. However, based on comments received suggesting DOE increase the value of the score for this criterion as well as the need to redistribute points proposed due to

deletion of the actual expenditures criterion, DOE has increased the maximum from 20 to 25 points.

Several comments suggested that some States might "low-ball" their planned figures then produce more to attain a higher score. Because of the existing program process and the relationship among the several evaluative criteria, DOE does not anticipate "grantsmanship" of this type to create a problem. For example, the projection in State plans of units to be weatherized must be consistent with the tentative allocation before DOE can approve a State plan. Moreover, if necessary, DOE can rely on historical data gathered by DOE on a State's production, expenditures, average cost per home, and average cost for materials. Additionally, low projections under one criterion may very well adversely affect the projections for the other evaluative criteria. Finally, since the maximum point value for this criterion is 25 regardless of production, DOE believes that this will minimize any incentive for or effect of a State projecting a low completion figure but achieving a higher figure in order to receive a higher score.

C. Comparable Energy Savings

The second performance criterion, also mandated by the Amending Act, requires DOE to consider comparable energy savings data in assessing the quality of weatherization assistance provided. Section 440.14(b)(5) of the program regulation already requires States in their Annual Plans to provide to DOE the estimated amount of energy to be conserved. DOE has completed an energy savings study entitled *Weatherization Program Evaluation* by Gerald E. Peabody, under contract SR-EEUD-81-1, published on August 20, 1984, by the Energy Information Administration of the Department of Energy. The study concludes that energy savings for this program average nationally between 13 to 14 percent. Copies of this report are available from DOE upon request.

DOE proposed to award a maximum score of 20 for this criterion. However, due to the deletion of one of the proposed criteria, DOE has increased the score to 25. DOE will award points for energy savings on the basis of data which States supply as required in the Annual State Plan. Additionally, since energy savings will be calculated from two separate State plans, DOE will average the energy savings estimates from the two plans to compute a score. No score will be awarded for program energy savings of 10 percent or less. For energy savings between 11 and 12

percent the value awarded is 5. For savings between 13 and 14 percent the value awarded is 10; between 15 and 16 the value awarded is 12; between 17 and 18 the value awarded is 14; between 19 and 20 the value awarded is 16; between 21 and 22 the value awarded is 18; and for 23 percent or higher the value awarded is 25. Any claims of more than 14 percent must be supported by sufficient documentation, as described below.

DOE requested comments on whether DOE should require a standardized methodology for estimating energy savings. Additionally, if a commenter favored a particular methodology, DOE requested detailed recommendations with respect to the methodology. Although two comments were received from States with existing methodologies for determining energy savings using computer capabilities that they felt could be used nationally, the majority of the comments questioned whether the adoption of a single methodology would be equitable on a national basis. Several comments asserted that energy savings as a criterion has the potential to bias the score in certain regions, especially in colder regions since recent amendments to the regulations now allow States to do extensive modifications such as replacement of furnaces. These changes, some suggested, place southern States at a disadvantage because most low-income homes in these States generally do not heat with furnaces but rather use space heaters which when replaced do not result in substantial energy savings. DOE acknowledges the problems associated with devising a standardized national formula given the number of variables. Therefore, DOE will allow States, as is the practice currently in use, the flexibility to develop their own comparable energy savings studies. However, any claim of more than 14 percent energy savings must be accompanied by supporting documentation for purposes of the Performance Fund. At a minimum, the State must provide the methodology it used in determining the energy savings. To be acceptable to DOE for purposes of demonstrating energy savings of more than 14 percent, the study methodology must meet the following criteria which were taken from the above mentioned program evaluation study:

1. Monitor energy use over at least one complete heating/cooling season.
2. Use a scientifically selected random sample of homes weatherized in the State during the study period.
3. Use statistically sound, generally accepted data analysis techniques to

measure and compare before and after energy use.

D. Document study procedures and results.

Several comments suggested DOE award funds based on the amount of energy saved proportionate to the amount of dollars expended. DOE does not consider this to be equitable for all States because many States in colder regions have available more cost effective measures than States in warmer climates. Therefore, DOE has decided not to adopt this suggestion.

D. Achievement of Goals

The third Performance Fund criterion is based on the State's actual achievement of its goals as projected in the State Application and Plan under §§ 440.12 and 440.14. The State Application and Plan, submitted annually, are important links between DOE and the State which tell how the Weatherization Program will be managed for the year. DOE will evaluate a State's achievement of goals by comparing the projected goals with actual production and expenditures as reported in data supplied monthly on DOE Standard Form 459E. The Quarterly Financial Status Report, Standard Form 269, will be used by DOE to evaluate the monthly reports for accuracy.

The areas of the State Application which DOE will use in its evaluation are as follows: (1) The production schedule for projected expenditures for each month (§ 440.14(b)(1)); (2) the estimated number of dwelling units expected to be weatherized during the relevant reporting period by category (§ 440.14(b)(2)); (3) the average amount of the DOE funds to be applied to any dwelling unit not to exceed \$1,600 (§ 440.14(b)(9)(viii)); (4) the requirement that States spend at least 40 percent of their program costs for weatherization materials (§ 440.14(b)(9)(ix)); (5) compliance with the State's Training and Technical Assistance Plan (T&TA) (§ 440.12(b)(7)); and (6) compliance with the Monitoring Plan (§ 440.12(b)(6)).

The maximum value score for this factor was proposed as 30. Due to changes made in this rule, the maximum value score is now 50. The scoring for areas (1) and (2) is to divide the actual performance figures by the planned goals and multiply each by 10. The scoring for areas (5) and (6) is to divide the actual performance figures by the planned goals and multiply each by 5. The maximum score for each area would be as indicated, even if actual performance were to exceed planning. Because areas (3) and (4) involve either

meeting or failing to meet limits in the Act and WAP regulations, DOE will award the maximum score of 10 to any State which complies and a score of zero to a State not in compliance.

One comment expressed concern over the scoring of T&TA activities since some States do not use DOE funds for this purpose. For States which do not use DOE funds for T&TA but rather apply these funds to weatherizing homes, the full 5 points will be awarded for this area of the criterion.

While most comments were supportive of this criterion, several comments suggested that § 440.27(b) and § 440.27(d)(1)(i) evaluate the same goals. Section 440.27(b) relates to the total number of weatherized dwelling units. As proposed, § 440.27(d)(1)(i) related to the production schedule indicating projected expenditures and the number of dwelling units expected to be weatherized each month. DOE agrees that there is some similarity between these two provisions.

Therefore, DOE has deleted that portion of § 440.27(d)(1)(i) relating to number of eligible dwelling units. Accordingly, DOE will compare only the actual monthly expenditures against projected monthly expenditures.

One comment disagreed with DOE assigning 30 points to this criterion because States rarely propose anything exceptional; they propose only minimum requirements. DOE believes the criterion and scoring for this section will prompt States to develop realistic goals and objectives for their weatherization programs. As discussed previously, in reviewing State plans, DOE will scrutinize these projected goals, as it currently does in reviewing State plans, to determine whether they are obtainable and will not approve unrealistic projections. Another comment believed DOE should not weigh heavily achievements of monthly goals for areas (1) and (2) of this criterion because States may encounter unexpected developments such as blizzards or hurricanes. DOE notes that while sections (1) and (2) are reported monthly, for the purposes of this Performance Fund, scores will be awarded based on total achievements throughout the fiscal year.

E. Actual Expenditures

The proposed rule contained a fourth criterion for the Performance Fund based on the State's actual expenditure of DOE funds during the relevant reporting period. It was proposed that States which expend all DOE funds during the relevant reporting period would receive the maximum score of 30 points. Any State which did not expend

all DOE funds would receive a reduced score.

A number of the comments received suggested that the actual expenditure of funds should not be a criterion by which performance is judged. Some stated that this criterion was weighted too highly, while others contended it was simply rewarding States for expending funds. Moreover, it was suggested that the criterion was at least in part duplicative of some of the other evaluative criteria. Based on these comments DOE has deleted that criterion in this rule. In doing so, DOE notes however, that as discussed below, the capability of expending allocated funds is still central to the amount awarded to States which qualify for the Performance Fund based on the remaining evaluative criteria.

F. Performance Fund Restrictions

DOE received comments concerning how funds awarded under the Performance Fund could be expended and how this may affect States' evaluation in the following year. Additional funds awarded under this Performance Fund are subject to all program and financial assistance rules. Moreover, no performance funds are to be used for training and technical assistance. Administrative costs can be incurred, not to exceed ten percent pursuant to § 440.18(d). States which are awarded performance funds will be notified in the Annual Grant Guidance of the tentative amount and will be required to submit, as a part of the State Plan, information detailing how these funds will be expended during the upcoming program year. This requirement is substantially the same for all new DOE funds applied to the program.

Section 440.28—Awarding the Performance Fund

This interim final rule provides that the money allocated to the Performance Fund will be awarded to the twenty States annually determined to have demonstrated the "best performance." A State's ranking will be based on the total score achieved as a result of DOE's evaluation of each performance criterion. A State which qualifies for performance funding will receive at least the percentage of its tentative allocation that is the same as the percentage (5 percent through 15 percent) used in determining the amount of the Performance Fund for that year. The criterion for distributing remaining funds is similar to that currently used to reallocate funds from States which are incrementally funded due to inability to expend DOE funds during a program year. DOE will evaluate production and

expenditures as reported by the States on DOE Form 459E and Form 269 for the relevant reporting period and determine the demonstrated capacity of each State to expend additional funds to weatherize homes. In no event would this additional amount exceed 50 percent of a State's full tentative allocation.

For example, if DOE selects 10 percent of an appropriation as the figure to be used for the Performance Fund for that year, then a State which qualifies will receive 10 percent of its tentative allocation from that year's Performance Fund. The remaining funds will be distributed to all twenty States qualifying, based on their demonstrated capacity to expend. In determining this amount, DOE will evaluate all data for each State with respect to that State's capacity to expend additional funds. This may include funds from other sources such as utility, State, as well as other Federal funds. This process is intended to be substantially the same as the current method DOE uses when reallocating funds within the program. For example, a State with a relatively low tentative allocation that scores very high in the Performance Fund would not receive any more funds than that State's demonstrated capacity to expend them. To reward a State with more money than it can expend in a timely fashion would jeopardize that State's performance for the relevant reporting period in which the funds were not expended.

One comment suggested having DOE select two States from the ten regions to comprise the twenty States who would be eligible to participate in the Performance Fund. Since some regions contain only three States and others as many as eight States, this would create an unfair advantage and eliminate some States regardless of their performance. Another comment asked how DOE would break a "tie" should one or more States have identical scores. If two or more States "tie" at the twentieth place, they will all qualify for the Performance Fund as if there were no "ties."

Section 440.29—Appeal

This interim final rule provides that States will be notified in writing of their individual performance score, ranking, and the amount, if any, of funds to be received from the Performance Fund. The information provided will include the complete ranking and scoring for all States. A State may appeal the results only as to any technical or clerical error in the scoring. A State may not appeal the amount of funds it has been awarded. Any appeal must be submitted

in writing to DOE within 10 days of the receipt of the notification.

III. Opportunity for Public Comment

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the matters set forth in this notice to: Conservation and Renewable Energy, Department of Energy, Office of Hearings and Dockets, Forrestal Building, Room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9319.

Comments should be identified on the outside of the envelope, and on the document themselves, with the designation: Weatherization Assistance for Low-Income Persons, Interim Final Rule, Docket Number CAS-RM-80-508. Five copies should be submitted. Although five (5) copies are requested to be submitted, this is not a mandatory requirement. In the event any person wishing to submit a written comment cannot provide five copies, alternative arrangements can be made in advance with the Office of Hearings and Dockets.

All comments received will be available for public inspection in the DOE Reading Room, 1E-090, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours, 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim. This procedure is set forth in 10 CFR 1004.11 (44 FR 1980, January 8, 1979).

DOE will hold a public hearing on this rule. The hearing will be held on the date and at the location indicated at the beginning of this notice.

Any person who has an interest in the regulation or who is a representative of a group or class of persons which has an interest in it may make a request for an opportunity to make an oral presentation. Such a request to speak at the hearing should be addressed to the Office of Hearings and Dockets, at the address indicated at the beginning of this notice.

The person making the request should describe briefly his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of a group. The person should also give a concise summary of the proposed oral presentation, and should provide a phone number where

the person may be reached. Each person selected to be heard at the public hearing will be notified. Those persons selected to be heard should bring five copies of their statement to the hearing; however, this is not a requirement. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance with the Office of Hearings and Dockets by so indicating in the letter or phone call requesting an opportunity to make an oral presentation.

DOE reserves the right to select persons to speak at the hearing, to schedule their presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation will be limited to twenty minutes or based on the number of persons requesting to speak.

A DOE official will preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all of the information available to DOE.

Any participant who wishes to ask a question at the hearing may submit the question in writing to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

If DOE must cancel the hearing, DOE will make every effort to publish an advance notice of the cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. The hearing date may be cancelled in the event no public testimony has been scheduled in advance.

IV. Environmental, Regulatory Impact, Regulatory Flexibility, Paperwork Reduction Act, and Coordinating Agency Reviews

A. Environmental Review

Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, 83 Stat. 852, 42 U.S.C. 4321 *et seq.*, DOE published a Notice of Availability of an Environmental Assessment (EA) (DOE/EA-0085) of the Program for Weatherization Assistance for Low-Income Persons in the **Federal Register** on April 10, 1979 (44 FR 21323). At the same time, DOE published notice of its determination, based on the EA, that the proposed action would not constitute a major Federal action significantly affecting the quality of the human environment, and that therefore no Environment Impact Statement (EIS) was required.

DOE has reviewed the environmental impacts of the program amendment and has concluded that the program amendments will result in no environmental impacts not previously analyzed in the EA. Accordingly, DOE has determined that the environmental impacts of the program amendments have been adequately analyzed in the April 1979 EA, and that these impacts are not significant. Hence, no additional EA or EIS is required.

B. Review Under Executive Order 12291

Today's issuance was reviewed under Executive Order 12291, (46 FR 13193, February 27, 1981). DOE has concluded that the rule is not a "major rule" under the Executive Order because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in cost or prices for consumers, individual industries, State, Federal or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to section 3(c)(3) of Executive Order 12291, this rule was submitted to the Director of OMB for a ten-day review. The Director has concluded his review of this regulation under the Executive Order.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*), requires, in part, that an agency prepare a final regulatory flexibility analysis for any final rule, unless it

determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and an explanation of that determination in the Federal Register. The amendments made in this rule are largely procedural and have direct effect on only States and other grantees. Any impact on small entities would not be direct and would have, at most, only a minimal effect on only a few small entities. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements contained in this rule are included in the Program Management package of information collections, and were approved by the Office of Management and Budget (OMB) under Control Number 1910-1400.

E. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Weatherization Assistance Program is 81.042.

F. Consultation

In developing these proposed regulations, DOE has consulted with the Departments of Housing and Urban Development, Health and Human Services, and Agriculture, pursuant to section 413(b) of the Energy Conservation and Production Act.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs—Energy, Grant programs—Housing and community development, Handicapped, Housing standards, Indians, Reporting and recordkeeping requirements, Weatherization.

In consideration of the foregoing, DOE hereby amends Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, DC, November 22, 1985.

Donna R. Fitzpatrick,
Acting Assistant Secretary, Conservation and Renewable Energy.

PART 440—[AMENDED]

1. The authority citation for Part 440 is revised to read as follows:

Authority: Title IV, Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1150 (42 U.S.C. 6851 *et seq.*), as amended; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*).

2. 10 CFR Part 440 is amended by adding to the Table of Contents the following entries:

Sec.
 440.26 Establishment of the Performance Fund.
 440.27 Evaluating State Performance.
 440.28 Awarding the Performance Fund.
 440.29 Appeals.

3. 10 CFR Part 440 is further amended by adding to § 440.3 in the appropriate alphabetical order the definition of "relevant reporting period".

§ 440.3 Definitions.

"Relevant Reporting Period" means the Federal fiscal year beginning on October 1 and running through September 30 of the following calendar year.

4. Section 440.26, 440.27, 440.28 and 440.29 are added to read as follows:

§ 440.26 Establishment of the Performance Fund.

The Secretary shall allot annually not less than five percent and no more than fifteen percent of the amount appropriated for each fiscal year for the program to a special Performance Fund, to be awarded to provide additional financial assistance under this part to the States which DOE determines demonstrated the best performance during the previous fiscal year in accordance with the evaluative criteria established in § 440.27 and the procedures established in § 440.28. DOE will announce the percentage chosen for the year in the Annual Grant Guidance issued to States.

§ 440.27 Evaluating State Performance.

(a) *Information.* (1) DOE will evaluate annually the performance of each State in the program based on the criteria set forth in paragraphs (b), (c), and (d) of this section from the following information submitted to DOE by the State:

(i) The annual State Application under § 440.12 including:
 (A) The State Plan,
 (B) The Monitoring Plan, and
 (C) The Training and Technical Assistance Plan;
 (ii) Monthly and quarterly reports required pursuant to § 440.25; and
 (iii) Any additional relevant information available to DOE.

(2) For the purposes of this Performance Fund, failure to submit

these forms within 30 days after the end of the fiscal year will result in a score of zero for the applicable criterion.

(b) *Percent of units weatherized (Maximum Score: 25 points).* DOE will score the States according to the reported percentage of eligible dwelling units in the State weatherized during the relevant reporting period. A State's score for this criterion is determined by taking the number of dwelling units weatherized, as reported to DOE pursuant to § 440.25, dividing it by the number of dwelling units expected to be weatherized during the relevant reporting period as submitted by the State in accordance with § 440.14(b)(8)(ii), and multiplying the result by 25.

(c) Comparable energy savings (Maximum Score: 25 points).

(1) DOE will award points to each State for the percentage of energy to be conserved in the State, as reported in the State Plan in accordance with § 440.14(b)(6), as follows:

(i) No points will be awarded for estimated energy savings of ten percent or less;

(ii) Five points will be awarded for estimated energy savings between eleven and twelve percent;

(iii) Ten points will be awarded for estimated energy savings between thirteen and fourteen percent;

(iv) Twelve points will be awarded for estimated energy savings between fifteen and sixteen percent;

(v) Fourteen points will be awarded for estimated energy savings between seventeen and eighteen percent;

(vi) Sixteen points will be awarded for estimated energy savings between nineteen and twenty percent;

(vii) Eighteen points will be awarded for estimated energy savings between twenty-one and twenty-two percent; and

(viii) Twenty-five points will be awarded for estimated energy savings of twenty-three percent or higher.

(2) If a State estimates energy savings to be greater than fourteen percent it must provide DOE with relevant information to support its estimates. To be acceptable to DOE for purposes of demonstrating energy savings, the study methodology must meet the following criteria:

(i) Monitor energy use over at least one complete heating/cooling period;

(ii) Use a scientifically selected random sample of homes weatherized in the State during the study period;

(iii) Use statistically sound, generally accepted data analysis techniques to measure and compare before and after energy use; and

(iv) Document study procedure and results.

(d) Achievement of goals (Maximum Score: 50 points).

(1) DOE will award each State a maximum score as indicated for each of the following goals stated in the State's Application under § 440.12 and the State Plan under § 440.14:

(i) The production schedule indicating projected expenditures each month (§ 440.14(b)(1))—(maximum score 10 points);

(ii) The number of dwelling units to be weatherized during the relevant reporting period by category (§ 440.14(b)(2))—(maximum score 10 points);

(iii) The amount spent (at least forty percent) on weatherization materials (§ 440.14(b)(9) (ix))—(maximum score 10 points);

(iv) The average amount of funds (not to exceed an average of \$1600) to be applied to a dwelling unit (§ 440.14(b)(9) (viii))—(maximum score 10 points);

(v) Compliance with the State Training and Technical Assistance Plan (§ 440.12(b)(7))—(maximum score 5 points); and

(vi) Compliance with the State Monitoring Plan (§ 440.12(b)(6))—(maximum 5 points).

(2) For each of paragraphs (d)(1) (i), (ii), (v), and (vi) of this section, a score will be awarded to a State by dividing the amount of actual achievement, as

reported to DOE pursuant to § 440.25, by the goal stated in the State's Application, and multiplying the result by ten for paragraphs (b)(1) (i) and (ii), and multiplying the result by five for paragraphs (d)(1) (v) and (vi).

(3) For each of paragraphs (d)(1) (iii) and (iv) of this section, a State will be awarded ten points if it complies with the criterion and no points if the State fails to comply.

§ 440.28 Awarding the Performance Fund.

(a) DOE will award funds from the Performance Fund to the twenty States annually determined to have demonstrated the best performance based on the criteria set forth in § 4440.27. If two or more States tie at the twentieth place, they will all qualify for the Performance Fund.

(b) At a minimum, the amount of funds from the Performance Fund to be awarded to a State will be the percentage of the State's tentative allocation that is equal to the percentage of funds reserved for the Performance Fund for that year.

(c) DOE will distribute the remaining money in the Performance Fund among the twenty States on the basis of their demonstrated ability to use program funds, except that no State will receive an amount equal to more than 50 percent of its tentative allocation. DOE will make this determination based primarily on the information provided

by the States to DOE for the relevant reporting period, and possibly for other periods of time, in the Monthly Status Report, Standard Form 459E, which details the States' production and expenditures, and the Quarterly Financial Status Report, Standard Form 269.

§ 440.29 Appeals.

(a) DOE will notify each State in writing of its score, ranking and the amount of funds, if any, to be awarded from the Performance Fund.

(b) If a State believes a technical or clerical error was made in arriving at its score, the State may file an appeal in writing with the Assistant Secretary for Conservation and Renewable Energy, within ten days of receipt of notification, at the Office of Weatherization Assistance, U.S. Department of Energy, Mail Stop 5G-023, 1000 Independence Avenue, SW., Washington, DC 20585 and marked "Weatherization Assistance: Appeal."

(c) 10 CFR 205.131 and 205.134 provide the format for such a request.

(d) The appeal must adequately explain how DOE made a technical or clerical error.

(e) DOE shall consider the appeal and notify the State of DOE's final determination within 30 days of the receipt of the appeal, if at all possible. [FR Doc. 85-28817 Filed 12-4-85; 8:45 am]

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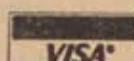
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